Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 18 March 2019
Meeting time: 14.30

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6.2 **Letter for the Chair of the External Affairs and Additional Legislation Committee to the First Minister: Scrutiny of Regulations made under the EU (Withdrawal) Act 2018 progress Report**

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6.3 **Letter from the Counsel General and Brexit Minister to the External Affairs and Additional legislation Committee: Welsh EU Exit Statutory Instruments**

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6.4 **Letter from the Counsel General and Brexit Minister: Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2019**

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6.5 **Letter from the Minister for Health and Social Services re: Supplementary Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill**

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CLA(5)-10-19 – Paper 94 – Letter from the Minister for Health and Social Services, 11 March 2019

6.6 **Letter from the Counsel General: Legislation (Wales) Bill**

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6.7 **Letter from the Llywydd: Speaker's Conference**

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7 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

8 Legislation (Wales) Bill: Draft Report

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Statutory Instruments with Clear Reports

18 March 2019

SL(5)339 – The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019

Procedure: Negative

These Regulations amend the Electricity (Offshore Generating Stations) (Safety Zones) Application Procedures and Control of Access Regulations 2007 (S.I./2007/1948), as a consequence of section 41 of the Wales Act 2017. Section 41 comes into force on 1 April 2019.

Section 41 amends section 95 and 96 of the Energy Act 2004, so that Welsh Ministers will have functions in relation to declaring safety zones around offshore renewable energy installations (with a capacity up to 350MW) in Welsh Waters,. It is a criminal offence for vessels to enter or remain in a safety zone unless permitted to do so by means of a safety zone notice issued by the appropriate Minister (in Welsh waters, this will be the Welsh Ministers).

The 2007 Regulations provide for information which needs to accompany a safety zone application, as well as the procedural requirements which need to be met. They also make provision for exemptions to the prohibition on entry into, and activities in, a safety zone.

Parent Act: Wales Act 2017

Date Made: 18 February 2019

Date Laid: 20 February 2019

Coming into force date: 01 April 2019

SL(5)340 – The Electricity (Offshore Generating Stations) (Fees) (Wales) Regulations 2019

Procedure: Negative

From 1 April 2019, the Welsh Ministers will be the appropriate authority in relation to applications under sections 36 and 36A of the Electricity Act 1989 (the "1989 Act") relating to generating stations in Welsh waters which have a capacity not exceeding 350 megawatts.

These Regulations provide for the payment of fees in respect of applications for consent under section 36 of the 1989 Act to construct, extend or operate an offshore generating station.

Parent Act: Electricity Act 1989

Date Made: 18 February 2019

Date Laid: 20 February 2019

Coming into force date: 01 April 2019

SL(5)347 – The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019

Procedure: Negative

This Order Amends the Developments of National Significance (Procedure) Wales Order 2016 (the "Procedure Order").

Article 2 amends articles 8 (which relates to the publicising of proposed applications) and 12 (which provides for general requirements in respect of applications) of the Procedure Order. The amendments add requirements where development consists of the installation of certain kinds of overhead electric lines. The requirements relate to the information that a proposed applicant must publish, and the content of the application.

Schedules 1 and 2 substitute the forms of notice in the Procedure Order to take account of the fact that decisions on consents connected with the

development of certain overhead electric lines may be taken by a person appointed by the Welsh Ministers for that purpose.

Schedule 3 amends Schedule 5 to the Procedure Order to amend the requirements in respect of the specialist consultees who must be consulted by the Welsh Ministers before the grant of planning permission.

Parent Act: Town and Country Planning Act 1990

Date Made: 4 March 2019

Date Laid: 5 March 2019

Coming into force date: 01 April 2019

SL(5)361 – The Zoonotic Disease Eradication and Control (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations make minor technical amendments to the following subordinate legislation, which apply in relation to Wales in relation to the monitoring and control of zoonotic disease and tuberculosis:

The Zoonoses (Monitoring) (Wales) Regulations 2007 (SI 2007/2459)

The Tuberculosis (Wales) Order 2010 (SI 2010/1379)

The amendments are to ensure that the statute book remains operable following the UK's exit from the EU and will address deficiencies in domestic legislation arising from EU Exit.

Parent Act: European Union (Withdrawal) Act 2018

Date Made: 25 February 2019

Date Laid: 27 February 2019

Coming into force: in accordance with regulation 1(2)

SL(5)387 – The National Health Service (Dental Charges) (Wales) (Amendment) Regulations 2019

Procedure: Negative

These Regulations amend the National Health Service (Dental Charges) (Wales) Regulations 2006 ("the 2006 Regulations").

Regulation 2 amends regulation 4 of the 2006 Regulations (calculation of charges) by increasing the applicable charge payable for a Band 1, a Band 2 and a Band 3 course of treatment.

Parent Act: National Health Service (Wales) Act 2006

Date Made: 5 March 2019

Date Laid: 6 march 2019

Coming into force date: 01 April 2019

SL(5)391 – Sea Fishing (Licences and Notices) (Wales) Regulations 2019

Procedure: Negative

These Regulations relate to licences issued in respect of Welsh fishing boats under sections 4 and 4A of the Sea Fish (Conservation) Act 1967, and to notices varying, suspending or revoking such licences. They revoke and replace, in relation to such licences and notices, the Sea Fishing (Licences and Notices) Regulations 1994.

They provide for the manner in which such licences are to be granted, varied, suspended or revoked, and for the time when such a grant, variation, suspension or revocation is to take effect.

Parent Act: Sea Fish (Conservation) Act 1967

Date Made: 6 March 2019

Date Laid: 7 March 2019

Coming into force: in accordance with regulation 1(1)

SL(5)371 – The Partnership Arrangements and Population Assessments (Miscellaneous Amendments) (Wales) Regulations 2019

Procedure: Affirmative

These draft Regulations amend the Partnership (Wales) Regulations 2015 ("the Partnership Regulations") and the Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015 ("the Population Assessments Regulations") in order to take into account health board boundary changes which will take place from 1st April 2019.

The draft Regulations amend the Partnership Regulations in order to:

- Change the partners included in both the Cwm Taf and Western Bay Regional Partnership Board areas to take account of the change to the boundaries of Abertawe Bro Morgannwg and Cwm Taf health boards;
- Change the names of the regional partnership boards affected by this health board boundary change to reflect the new names of the Swansea Bay and Cwm Taf Morgannwg health boards;
- Clarify requirements for regional partnership boards to establish regional pooled funds in relation to care home places for older people;
- Require housing and education representation on regional partnership boards;
- Clarify when regional partnership boards must produce annual reports.

They also amend the Population Assessments Regulations in order to:

- Change the partnership arrangements for population assessments to take account of the health board boundary change;
- Change references to the names of the health boards above to reflect changes to those names as a result of the boundary change.

Parent Act: Social Services and Well-being (Wales) Act 2014

Date Made:

Date Laid:

Coming into force date:

Statutory Instruments with clear reports, that were previously considered for sifting and are now subject to scrutiny under Standing Orders 21.2 and 21.3

18 March 2019

The following instruments were previously considered for sifting in accordance with Standing Order 21.3B. In the sift process, the Committee agreed that in all cases the appropriate procedure for the Regulations was the negative resolution procedure. Now the instruments are subject to usual scrutiny in accordance with Standing Orders 21.2 and 21.3. Although all the instruments have clear reports they also contain a merits point to highlight the sift process:

> **Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly**
>
> **A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations**

SL(5)379 – The Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations are made under paragraph 1 of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 to try to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

They are also made under sections 132 and 135 of the Education Act 2002.

The Regulations make amendments to subordinate legislation relevant to the recognition of teachers' qualifications in Wales.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 18 February 2019

Date Made: 4 March 2019

Date Laid: 5 March 2019

Coming into force: In accordance with regulation 1(2)

SL(5)343 – The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019

Background and Purpose

These Regulations make provision about inquiries caused to be held by the Welsh Ministers in relation to applications:

- for consent under section 36 of the Electricity Act 1989 to construct, extend or operate an offshore generating station in Welsh waters which has or will have a capacity not exceeding 350 megawatts.
- Under section 36C of the Electricity Act 1989 to vary a section 36 consent.

Procedure

Negative

Technical Scrutiny

Three points are identified for reporting under Standing Order 21.2 in respect of this instrument:-

1. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

The Regulations contain a number of typographical errors. Regulation 2(4)(**a**)(ii) (b) (ii) should start with a 'where' rather than 'were'. In Regulation 3 (3) there is a superfluous 'be' after 'requirement is'. In regulation 16 (3), there appears to be a superfluous 'to be'. Whilst we accept these are minor errors which are unlikely to cause confusion, they are however drafting errors.

2. **Standing Order 21.2 (v) that for any particular reason its form or meaning needs further explanation. Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 16 (1) states that "the applicant must in two successive weeks publish a notice stating…" – It is not clear when publication is to take place. Regulation 16 (1) (d) provides that the notice must include the location, date and time of the inquiry. This means publication would have to take place after the applicant has received notice of the inquiry under regulation 15. There would appear however to be nothing to stop an applicant giving notice either immediately before or during the inquiry. As a purpose of the notice is to make the location, date and time of the inquiry known to persons who are likely to be affected by any consent applied for, (presumably so that they can attend) serving the notice immediately before or during the inquiry may mean that such persons are unable to attend having received insufficient notice.

3. **Standing Order 21.2 (v) that for any particular reason its form or meaning needs further explanation. Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In regulation 16 (2) it isn't clear why the definition of "by local advertisement" which is used else- where in the regulations and is defined in regulation 2 isn't used. It is not clear therefore whether regulation 16 (2) requires the applicant to do something different than to publish "by local advertisement."

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

The technical scrutiny element of the draft report refers to three drafting errors, all of which are accepted.

Point 1 – typographical errors

The reporting point is noted and accepted. The government will look to correct this point by way of correction slip.

Point 2 – Regulation 16(1) - is not clear when publication is to take place

The wording in regulation 16 (1) is derived from paragraph 4 of Schedule 8 to the Electricity Act 1989 ("Schedule 8") and has operated for a significant period of time without apparent problem. It is, however, accepted that providing a timeframe for when publication is to take place would provide clarity. An amending instrument will be made and laid as soon as reasonably practicable.

Point 3 – Regulation 16 (2) it is not clear why the definition of "by local advertisement" which is used else- where in the regulations and is defined in regulation 2 isn't used.

This provision is derived from paragraph 4 of Schedule 8. The wording is broadly the same as the definition of "by local advertisement". However it is accepted that, for consistency, it would be helpful if regulation 16(1) referred to publication "by local advertisement" with 16(2) being omitted. An amending instrument will be made and laid as soon as reasonably practicable.

Legal Advisers

Constitutional and Legislative Affairs Committee

12th March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 304 (W. 77)

ELECTRICITY, WALES

The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about inquiries caused to be held by the Welsh Ministers in relation to applications:

— for consent under section 36 of the Electricity Act 1989 ("the 1989 Act" and such consent a "section 36 consent") to construct, extend or operate an offshore generating station;

— under section 36C of the 1989 Act, to vary a section 36 consent.

For the purposes of these Regulations reference to an application for a section 36 consent includes any application under section 36A of 1989 Act for a declaration relating to public rights of navigation, which is made with an application for a section 36 consent.

The Welsh Ministers are the appropriate authority in relation to applications made after 1 April 2019 under sections 36 and 36C of the 1989 Act relating to generating stations (or proposed generating stations) in Welsh waters which have or will have a capacity not exceeding 350 megawatts.

"Welsh waters" means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales, and the Welsh zone. "Welsh zone" has the meaning given in section 158 of the Government of Wales Act 2006.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a

regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2019 No. 304 (W. 77)

ELECTRICITY, WALES

The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019

Made *18 February 2019*

Laid before the National Assembly for Wales *20 February 2019*

Coming into force *1 April 2019*

The Welsh Ministers, in exercise of the powers conferred on them by sections 36(8A), 36C(2) and (6) and 60 of the Electricity Act 1989(**1**), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 and they come into force on 1 April 2019.

(2) These Regulations apply in relation to any inquiry caused by the Welsh Ministers to be held on or after 1 April 2019 into an application or variation application.

Interpretation

2.—(1) In these Regulations—

"the 1990 Act" ("*Deddf 1990*") means the Town and Country Planning Act 1990(**2**);

(**1**) 1989 c. 29. Section 36(8A) was inserted by paragraph 47 of Schedule 6 to the Wales Act 2017 (c. 4) ("the 2017 Act"). Section 36C was inserted by section 20(1) and (2) of the Growth and Infrastructure Act 2013 (c. 27) ("the 2013 Act") and was amended by section 39(12) of, and paragraph 48 of Schedule 6 to, the 2017 Act. There are other amendments to section 36C and amendments to section 60 which are not relevant to these Regulations.

(**2**) 1990 c. 8.

"the Applications for Consent Regulations" ("*y Rheoliadau Ceisiadau am Gydsyniad*") means the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019(**1**);

"the Variation of Consents Regulations" ("*y Rheoliadau Amrywio Cydsyniadau*") means the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019(**2**);

"additional inspector" ("*arolygydd ychwanegol*") means an inspector appointed by the Welsh Ministers under regulation7(2)(a);

"applicant" ("*ceisydd*") means the person making an application or variation application;

"application" ("*cais*") means, except where the context requires otherwise, an application to the Welsh Ministers for consent under section 36(**3**) to construct, extend or operate a generating station(**4**), together with any application under section 36A(**5**) for a declaration relating to rights of navigation which is made with the application under section 36;

"assessor" ("*asesydd*") means a person appointed by the Welsh Ministers to sit with an inspector at an inquiry or re-opened inquiry to advise the inspector on such matters arising as the Welsh Ministers may specify;

"by local advertisement" ("*drwy hysbyseb leol*") in relation to a notice, means by publication of the notice in at least one newspaper such that the notice is likely to come to the attention of those likely to be affected by the consent applied for if given;

"document" ("*dogfen*") includes a photograph, map or plan;

"electronic communication" ("*cyfathrebiad electronig*") has the same meaning as in section 15(1) of the Electronic Communications Act 2000(**6**);

(**1**) S.I. 2019/295 (W. 73).
(**2**) S.I. 2019/297 (W. 75).
(**3**) Section 36 was amended by section 93 of the Energy Act 2004 (c. 20), paragraph 32 of Schedule 2 to the Planning Act 2008 (c. 29), section 12(7) and (8) of the Marine and Coastal Access Act 2009 (c. 23) ("the 2009 Act"), section 78 of the Energy Act 2016 (c. 20) and section 39(7)-(11) of, and paragraph 47 of Schedule 6 to, the 2017 Act. Other amendments are not relevant to these Regulations.
(**4**) See section 64(1) of the Electricity Act 1989 (c. 29) ("the 1989 Act") for the interpretation of "generating station".
(**5**) Section 36A was inserted into the 1989 Act by section 99(1) of the Energy Act 2004 (c. 20) and was amended by section 12(7) and (8) of the 2009 Act and section 40(1)-(5) of the 2017 Act.
(**6**) 2000 c. 7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

"inquiry" ("*ymchwiliad*") means an inquiry in relation to which these Regulations apply; and where an inquiry is conducted by means of concurrent sessions, it includes any such session;

"inspector" ("*arolygydd*") includes a lead inspector and an additional inspector;

"interested authority" ("*awdurdod â buddiant*") means any local planning authority in Wales upon whom the applicant has served notice of the application in accordance with regulation 5 of the Applications for Consent Regulations;

"lead inspector" ("*arolygydd arweiniol*") means a person appointed by the Welsh Ministers to hold an inquiry or a re-opened inquiry;

"local planning authority" ("*awdurdod cynllunio lleol*") has the same meaning as in Part I of the 1990 Act;

"mediator" ("*cyfryngwr*") means a person appointed by the Welsh Ministers under regulation 9;

"outline statement" ("*datganiad amlinellol*") means a written statement of the principal submissions which a person proposes to put forward at an inquiry;

"person entitled to appear" ("*person sydd â hawl i ymddangos*") means a person described in regulation 17(1), and cognate expressions are to be construed accordingly;

"place" ("*lle*") means, unless the context otherwise requires, the place to which an inquiry relates, that is, the place where—

(a) it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated; and

(b) any section 90 development will be situated;

"pre-inquiry meeting" ("*cyfarfod rhagymchwiliad*") means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where two or more such meetings are held about the same inquiry, references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting;

"qualifying objector" ("*gwrthwynebydd cymwys*") means—

(a) where the Welsh Ministers have caused an inquiry to be held under regulation 9(1) or 10 of the Applications for Consent Regulations, anyone who objected to the application by the date and in the manner provided for in regulation 8(1) of those Regulations;

(b) where the Welsh Ministers have caused an inquiry to be held under regulation 6 of the Variation of Consent Regulations, any person who made representations objecting to the variation application by the date provided for in regulation 5(6)(b)(iii) of those Regulations,

and whose objection has not been withdrawn;

"qualifying planning authority" ("*awdurdod cynllunio cymwys*") means—

(a) where the Welsh Ministers have caused an inquiry to be held under regulation 9(1) of the Applications for Consent Regulations, any relevant planning authority who has objected to the application in accordance with regulation 8(2) of those Regulations and whose objection has not been withdrawn;

(b) where the Welsh Ministers have caused an inquiry to be held under regulation 6 of the Variation of Consents Regulations, any relevant planning authority, if they have made representations (which have not been withdrawn) objecting to a variation application;

"registration form" ("*ffurflen gofrestru*") means a form for completion by persons who wish to participate in the inquiry;

"relevant notice" ("*hysbysiad perthnasol*") means the Welsh Ministers' written notice under regulation 4(1);

"relevant planning authority" ("*awdurdod cynllunio perthnasol*") in the case of—

(a) an inquiry into an application, has the same meaning as in regulation 2(1) of the Applications for Consent Regulations;

(b) an inquiry into a variation application, has the same meaning as in regulation 2 of the Variation of Consents Regulations;

"section 90 development" ("*datblygiad adran 90*") means any development in respect of which an applicant, on making an application or variation application, requests the Welsh Ministers to give a direction under section 90(2) or (2ZA) of the 1990 Act(**1**) (deemed planning permission for development with government authorisation);

"statement of case" ("*datganiad achos*") means a written statement which contains—

(a) full particulars of the case which a person proposes to put forward at an inquiry;

(**1**) Section 90(2) and (2ZA) were substituted by section 21(2) of the 2013 Act and were amended by section 39(13) of the 2017 Act.

(b) a list of any documents which that person intends to refer to or put in evidence;

(c) a list of the individuals whom that person proposes to call as witnesses; and

(d) the subject-matter of the evidence of each such witness;

"statement of common ground" ("*datganiad tir cyffredin*") means a written statement prepared jointly by the relevant planning authority (where it is a local planning authority in Wales) and the applicant, which contains agreed factual information about the proposal which is the subject of the application or the variation application;

"technical adviser" ("*cynghorydd technegol*") means a person appointed by the Welsh Ministers under regulation 8;

"variation application" ("*cais i amrywio*") has the same meaning as in regulation 2 of the Variation of Consents Regulations.

(2) Unless otherwise stated, any reference in these Regulations to a numbered section is a reference to that section of the Electricity Act 1989.

(3) Subject to paragraph (5), a requirement imposed by these Regulations on the Welsh Ministers or the inspector to circulate a document is met by sending a copy of that document to—

(a) the relevant planning authority;

(b) the applicant; and

(c) each qualifying objector who has indicated in accordance with regulation 6(4)(b)(iv) that they are likely to want to be represented formally and to play a major part in the inquiry.

(4) Subject to paragraph (5), a requirement imposed by these Regulations on the Welsh Ministers or the inspector to deposit a document is met by sending a copy of it—

(a) in the case of an inquiry into an application—

(i) where part of the place to which the application relates is within the area of a relevant planning authority, to the relevant planning authority; or

(ii) were no part of the place to which the application relates is within the area of a relevant planning authority, to the interested authority; and

(b) in the case of an inquiry into a variation application, to any relevant planning authority which is a local planning authority in Wales.

(5) Nothing in paragraph (3) or (4) requires the Welsh Ministers or the inspector to send a copy of a document to the person from whom it was received.

(6) A requirement imposed by these Regulations on the Welsh Ministers to publish a notice on a website is met—

(a) by publication of the notice, or of the details required to be contained in that notice, on a website maintained by the Welsh Ministers; or

(b) by publication of a link on a website maintained by the Welsh Ministers to another website on which the notice is published or the details required to be contained in that notice are published.

Electronic communications

3.—(1) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being carried out electronically—

(a) the expression "address" includes any number or address used for the purposes of such communications, except that where any provision of these Regulations requires any person to provide a name and address to any other person, the requirement is not fulfilled unless the person subject to the requirement provides a postal address;

(b) references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (7) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement of these Regulations to give or send any statement, notice or other document to any other person ("the recipient")

(3) The requirement is be taken to be fulfilled where the statement, notice or other document transmitted by means of the electronic communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), "legible in all material respects" means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient outside the recipient's business hours, it will be taken to have been received on the next working day; and for this purpose "working day" means a day which is not a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank

holiday in England and Wales under the Banking and Financial Dealings Act 1971(**1**).

(6) A requirement of these Regulations that any document must be in writing is fulfilled where that document satisfies the criteria in paragraph (3).

(7) A requirement in these Regulations to send more than one copy of a statement, notice or other document may be complied with by transmitting one copy only of the statement, notice or other document in question.

Notice by the Welsh Ministers

4.—(1) The Welsh Ministers must send the applicant and the relevant planning authority in writing—

(a) notice that an inquiry is to be held;

(b) notice that there will be a pre-inquiry meeting or that they have decided not to hold one in accordance with regulation 10(2); and

(c) a statement of the matters which, in their view, are the matters to be considered at the inquiry.

(2) The Welsh Ministers may at any time modify the statement referred to in paragraph (1)(c) and if they do so they must send the modified statement to the applicant who must publish by local advertisement a notice of the modification made.

(3) Where the Welsh Ministers have modified the statement referred to in paragraph (1)(c) under paragraph (2), they must publish a notice of the modification made on a website.

Preliminary information to be supplied

5. The Welsh Ministers must as soon as practicable after the issue of a relevant notice inform the applicant and any qualifying planning authority in writing of the name and address of any qualifying objector.

Registration

6.—(1) The Welsh Ministers must as soon as practicable after the issue of a relevant notice send to each person entitled to appear or whom they know to have an interest in the proposal, a copy of the statement sent by the Welsh Ministers under regulation 4(1)(c) and a registration form in the form provided for in paragraph (4).

(2) On receipt of the relevant notice, the applicant must publish by local advertisement a notice stating—

(a) that these Regulations apply to the inquiry;

(**1**) 1971 c. 80.

(b) the matters contained in the statement sent by the Welsh Ministers under regulation 4(1)(c);

(c) the arrangements for the first pre-inquiry meeting, if any; and

(d) that persons interested in participating in the inquiry should obtain a registration form from the Welsh Ministers.

(3) The Welsh Ministers must as soon as practicable after the applicant has complied with paragraph (2) publish the notice referred to in that paragraph on a website.

(4) The registration form must—

(a) include the address to which completed forms must be returned and the date by which that must be done, which must be no later than eight weeks after the date of the relevant notice;

(b) request the following information—

(i) the name, address and telephone number of the person registering;

(ii) the name, address and telephone number of any agent, or, in the case of an organisation, of the contact person;

(iii) whether or not the person registering has an interest in any land to which the inquiry relates which will be affected by the proposal;

(iv) whether or not the person registering is likely to want to be represented formally and play a major part in the inquiry;

(v) if not, whether or not the person registering wishes to give oral evidence at the inquiry or wishes only to submit representations in writing; and

(c) request that the completed registration form is accompanied by two copies of an outline statement from the person registering.

(5) The Welsh Ministers must, as soon as practicable after the date by which the registration form must be returned under paragraph (4)(a), circulate each outline statement received by them as mentioned in paragraph (4)(c).

Additional inspectors

7.—(1) At any time after appointing the lead inspector, the Welsh Ministers may direct the lead inspector—

(a) to consider such matters relating to the conduct of the inquiry as are specified in the direction;

(b) to make recommendations to the Welsh Ministers about those matters.

(2) After considering the recommendations of the lead inspector, the Welsh Ministers may—

(a) appoint for the purposes of the inquiry such number of additional inspectors as they think appropriate; and

(b) direct that each additional inspector must consider such of the matters to which the inquiry relates as are allocated to that additional inspector by the lead inspector.

(3) An additional inspector must—

(a) comply with every direction as to procedural matters given to that additional inspector by the lead inspector; and

(b) report to the lead inspector on every matter allocated to that additional inspector.

(4) The lead inspector must report to the Welsh Ministers on the consideration of—

(a) matters which the lead inspector has considered; and

(b) matters the consideration of which was allocated to additional inspectors.

(5) The Welsh Ministers may give directions to the lead inspector on one or more occasions after the appointment of the lead inspector.

(6) The recommendations that may be made by the lead inspector following a direction include, in particular, a recommendation for varying the number of additional inspectors.

(7) The power of the Welsh Ministers to appoint an additional inspector includes power to revoke an appointment.

(8) A direction by the Welsh Ministers under this regulation may be varied or revoked by a subsequent direction.

Appointment of technical adviser

8.—(1) If it appears to the Welsh Ministers that evidence to be given to the inquiry is, or is likely to be, of such technical or scientific nature that the inquiry would be conducted more efficiently and expeditiously if an expert and independent assessment of that evidence were to be made, they may at any time appoint a technical adviser for that purpose.

(2) A technical adviser is a person appearing to the Welsh Ministers to have such qualifications and experience as enable the technical adviser to conduct an expert assessment of scientific or technical evidence to be given to the inquiry.

(3) Where the Welsh Ministers appoint a technical adviser, they may in writing require the applicant to publish by local advertisement and within such period as they may specify a notice stating the name of the person so appointed and specifying the evidence to be assessed.

(4) Where the Welsh Ministers require the applicant to publish a notice under paragraph (3), as soon as reasonably practicable after the applicant has complied with that paragraph the Welsh Ministers must publish that notice on a website.

(5) The technical adviser must, in consultation with the persons entitled to appear either jointly or separately, assess the evidence so specified and must report that assessment in writing to the inspector.

(6) The technical adviser's report must include a description of any areas of disagreement between the parties and must state the technical adviser's view of the significance of each such disagreement.

(7) The inspector must circulate the technical adviser's report within seven days of receiving it.

(8) The technical adviser must give evidence on the technical adviser's report at the inquiry and is subject to cross-examination to the same extent as any other witness.

(9) The inspector may allow the technical adviser to alter or add to the technical adviser's report so far as may be necessary for the purposes of the inquiry; but the inspector must (if necessary by adjourning the inquiry) give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any such alteration or addition.

Mediation

9.—(1) If it appears to the Welsh Ministers that—

(a) there is an absence of agreement between persons entitled to appear on a matter which is relevant to the inquiry;

(b) the inquiry would be conducted more efficiently and expeditiously if agreement could be reached in relation to that matter or any disagreement in relation to it could be defined and narrowed; and

(c) such a result is capable of being achieved by mediation,

then they may at any time appoint a mediator for that purpose.

(2) A mediator must be a person appearing to the Welsh Ministers to have been trained in mediation techniques by an independent mediation organisation.

(3) Where the Welsh Ministers appoint a mediator, they may in writing require the applicant to publish by

local advertisement and within such period as they may specify a notice stating the name of the person so appointed and the matter in relation to which that person is to mediate.

(4) Where the Welsh Ministers require the applicant to publish a notice under paragraph (3), as soon as reasonably practicable after the applicant has complied with that paragraph, the Welsh Ministers must publish that notice on a website.

(5) The mediator must determine the procedure for the mediation.

(6) Within seven days from the conclusion of the mediation, the mediator must give to the inspector a report describing the mediation procedure and its outcome and the inspector must, as soon as practicable after receipt, send the report to persons entitled to appear.

(7) The inspector must permit any person entitled to appear to address the inspector on the report referred to in paragraph (6), but the mediator is not to give evidence at the inquiry.

Procedure for pre-inquiry and other meetings

10.—(1) Subject to paragraph (2), the Welsh Ministers must hold one or more pre-inquiry meetings.

(2) Paragraph (1) does not apply where the Welsh Ministers consider that holding a pre-inquiry meeting would not result in the inquiry being conducted more efficiently and expeditiously, in which case paragraphs (3) to (9) do not apply.

(3) The pre-inquiry meeting (or, where there is more than one, the first pre-inquiry meeting) must be held within twelve weeks of the date of the relevant notice.

(4) The Welsh Ministers must give not less than three weeks' written notice of the pre-inquiry meeting (or, where there is more than one, the first pre-inquiry meeting) to—

(a) any person entitled to appear; and

(b) any other person whose presence at the pre-inquiry meeting seems to the Welsh Ministers to be desirable.

(5) The Welsh Ministers may in writing require the applicant to take one or more of the following steps—

(a) not less than two weeks before the date fixed for the first pre-inquiry meeting, to publish by local advertisement a notice of the pre-inquiry meeting;

(b) to send a notice of that pre-inquiry meeting to such persons or classes of persons as the Welsh Ministers may specify and within such period as they may specify;

(c) to post a notice of that pre-inquiry meeting in such locations that it is likely to come to the attention of those likely to be affected by the consent applied for if it is given, and within such period as they may specify.

(6) A notice of the pre-inquiry meeting published, sent or posted pursuant to paragraph (5) must state—

(a) the fact that the application or the variation application has been made and the purpose of it, together with a description of the place to which it relates;

(b) where the inquiry relates to an application that a copy of the application and the map referred to in it, can be inspected at the same location or locations used to display the map pursuant to regulation 7(2) of the Applications for Consent Regulations or, if in relation to any such location that is not possible, at a suitable alternative location as near to it as possible;

(c) where the inquiry relates to a variation application, a place in the locality where those likely to be affected by the proposed development live or work where a copy of the variation application and of the map referred to in it can be inspected; and

(d) the location, date and time of the pre-inquiry meeting.

(7) The inspector—

(a) must preside at each pre-inquiry meeting;

(b) must determine the matters to be discussed and the procedure to be followed;

(c) may require any person present at the pre-inquiry meeting who, in the inspector's opinion, is behaving in a disruptive manner to leave; and

(d) may refuse to permit that person to return or to attend any further pre-inquiry meeting, or may permit that person to return or attend only on such conditions as the inspector may specify.

(8) If the Welsh Ministers request any further information from the applicant, any qualifying planning authority, any qualifying objector or any other person at the pre-inquiry meeting, that person must ensure that two copies of the information (in the case of the applicant or any qualifying planning authority) or three copies (in the case of any other person) are received by the Welsh Ministers within such period as the Welsh Ministers may specify.

(9) The Welsh Ministers must, as soon as practicable after receipt, circulate all information received by them under paragraph (8).

(10) The inspector may at any time and for any purpose connected with the inquiry hold such other meetings as the inspector considers necessary.

(11) The inspector must arrange for such notice to be given of those meetings held in accordance with paragraph (10) as the inspector considers necessary.

(12) Paragraph (7) applies to any meetings held in accordance with paragraph (10).

Publicity for inspector's notes of pre-inquiry meetings and recommendations

11.—(1) As soon as practicable after the end of each pre-inquiry meeting the inspector must prepare a note of the proceedings at that meeting and send a copy of that note to the Welsh Ministers.

(2) As soon as practicable after sending the copy of the note to the Welsh Ministers, the inspector must circulate it.

(3) As soon as practicable after making recommendations to the Welsh Ministers on the matters which the inspector is directed to consider under regulation 7(1)(a) the inspector must circulate a copy of those recommendations.

Receipt of statements of case etc.

12.—(1) The applicant must—

(a) ensure that within the period specified in paragraph (3), two copies of the applicant's statement of case are received by the Welsh Ministers; and

(b) as soon as reasonably practicable after sending the statement of case to the Welsh Ministers, send a copy of it to every other person whom the applicant knows to be entitled to appear.

(2) The persons to whom this paragraph applies must—

(a) ensure that within the period specified in paragraph (3) two copies of their statement of case are received by the Welsh Ministers; and

(b) as soon as reasonably practicable after sending the statement of case to the Welsh Ministers, send a copy of it to every other person whom they know to be entitled to appear.

(3) Unless the Welsh Ministers specify another period by notice in writing, the periods within which statements of case must be received by the Welsh Ministers are—

(a) in the case of an applicant—

(i) where a pre-inquiry meeting is held, four weeks from its conclusion;

(ii) otherwise twelve weeks from the date of the relevant notice;

(b) in the case of any person to whom paragraph (2) applies—

(i) where a pre-inquiry meeting is held, six weeks from its conclusion;

(ii) otherwise fourteen weeks from the date of the relevant notice.

(4) The persons to whom paragraph (2) applies are—

(a) any qualifying planning authority;

(b) any qualifying objector who indicated in accordance with regulation 6(4)(b)(iv) that they were likely to want to be represented formally and to play a major part in the inquiry; and

(c) any other person required to send a statement of case in accordance with paragraph (5).

(5) The Welsh Ministers may in writing require any other person who has notified them of an intention or wish to appear at the inquiry, to send to the Welsh Ministers two copies of their statement of case and in this case the Welsh Ministers must—

(a) send to that person a statement of the matters referred to in regulation 4(1)(c); and

(b) as soon as practicable inform that person of the name and address of every person to whom that person's statement of case is required to be sent.

(6) Where a relevant planning authority which is a local planning authority in Wales is required to send a statement of case under this regulation, that statement of case must include details of the time and location where the opportunity to inspect and take copies described in paragraph (13) is to be afforded.

(7) Any person referred to in paragraph (4)(a) or (b) must in their statement of case identify each part of the applicant's statement of case with which they agree and each part with which they do not agree, and must state the reasons for each disagreement.

(8) The Welsh Ministers must deposit each statement of case and copies of any documents or relevant part of any documents as soon as practicable after receipt.

(9) The applicant and any person referred to in paragraph (4)(a) or (b), may in writing request from any other person who is required to provide a statement of case, a copy of any document, or of the relevant part of any document, referred to in the list of documents contained in that person's statement of case; and any such document, or relevant part, must be

sent, as soon as practicable, to the person who requested it.

(10) The Welsh Ministers or the inspector may in writing require any person, who has sent a statement of case in accordance with this regulation, to provide—

(a) a specified number of additional copies of the statement; or

(b) such further information about the matters contained in the statement as they may specify,

and must specify the time within which the copies or information must be received by them.

(11) Any person required to provide additional copies or further information must—

(a) ensure that the additional copies have been received by the Welsh Ministers or the inspector, within the specified time;

(b) ensure that two copies of the further information have been received by the Welsh Ministers or the inspector, within the specified time; and the Welsh Ministers or the inspector must, as soon as practicable after receipt, deposit that further information; and

(c) as soon as reasonably practicable after sending the further information to the Welsh Ministers or the inspector, send a copy of it to every other person whom the person providing the information knows to be entitled to appear.

(12) Any person who sends a statement of case to the Welsh Ministers must send with it a copy of—

(a) any document; or

(b) the relevant part of any document,

referred to in the list contained in that statement of case, unless a copy of the document or part of the document in question is already available for inspection pursuant to paragraph (13).

(13) Where the relevant planning authority is a local planning authority in Wales, they must afford to any person who so requests, a reasonable opportunity to inspect and, where practicable, take copies of—

(a) any statement of case, written comments, information or other document a copy of which has been deposited in accordance with this regulation; and

(b) the statement of case, if any, of the relevant planning authority and any written comments, information or other documents sent by the relevant planning authority pursuant to this regulation,

subject to the payment by that person of a reasonable charge.

(14) Where no part of the place to which an application relates is within the area of a relevant planning authority—

(a) paragraph (6) applies as if for "Where a relevant planning authority which is a local planning authority in Wales" there were substituted "Where an interested authority";

(b) paragraph (13) applies as if for "Where the relevant planning authority is a local planning authority in Wales, they" there were substituted "The interested authority".

(15) If any person who sends a statement of case under this regulation wishes to comment on another person's statement of case they must—

(a) ensure that within four weeks of its receipt two copies of their written comments are received by the Welsh Ministers; and the Welsh Ministers must, as soon as practicable after receipt, deposit such comments; and

(b) as soon as practicable after sending their comments to the Welsh Ministers, send a copy of them to every other person whom they know to be entitled to appear.

(16) The Welsh Ministers must, as soon as practicable after receipt, send to the inspector any statement of case, document, or further information or written comments received by them in accordance with this regulation.

Inquiry timetable

13.—(1) The inspector must at a pre-inquiry meeting held in accordance with regulation 10—

(a) arrange a timetable for the proceedings at, or at part of, an inquiry; and

(b) specify the date by which any proof of evidence and summary sent in accordance with regulation 18 and any statement of common ground sent in accordance with regulation 19, must be received by the Welsh Ministers,

and must give written notice of the date so specified to every person entitled to appear.

(2) The inspector must no later than four weeks before the start of the inquiry send to every person entitled to appear a copy of the timetable.

(3) Where no pre-inquiry meeting is held, the inspector—

(a) may arrange a timetable for the proceedings at, or at part of, an inquiry; and

(b) must specify the date by which any proof of evidence and summary sent in accordance with regulation 18, and any statement of

common ground sent in accordance with regulation 19, must be received by the Welsh Ministers,

and must give written notice of the timetable, if any, and date so specified to every person entitled to appear within ten weeks of the date of the relevant notice.

(4) The inspector may at any time vary any timetable arranged under this regulation and any changes to the timetable must be notified to every person entitled to appear.

Notification of appointment of assessor

14. Where the Welsh Ministers appoint an assessor, they must notify in writing every person entitled to appear of—

(a) the name of the assessor; and

(b) the matters on which the assessor is to advise the inspector.

Date and notification of inquiry

15.—(1) Subject to paragraph (2), the date fixed by the Welsh Ministers for the holding of an inquiry must be no later than—

(a) ten weeks after conclusion of the pre-inquiry meeting, if held;

(b) otherwise eighteen weeks from the date of the relevant notice.

(2) Where the Welsh Ministers consider it impracticable to fix a date in accordance with paragraph (1), the date fixed must be the earliest date which they consider is practicable.

(3) Unless the Welsh Ministers agree a shorter period of notice with the applicant and any qualifying planning authority, they must give not less than four weeks' written notice of the date, time and location fixed for the inquiry to every person entitled to appear.

(4) The Welsh Ministers may vary the date fixed for the inquiry, whether or not the date as varied is within the period applicable under paragraph (1).

(5) Paragraph (3) applies to a variation of a date as it applied to the date originally fixed.

(6) The Welsh Ministers may vary the time or location for the holding of an inquiry and must give such notice of any variation as appears to them to be reasonable.

(7) A written notice is to be taken to have been given by the Welsh Ministers for the purposes of paragraph (3) where they and any person entitled to appear have agreed that notice of the matters mentioned in that paragraph may instead be accessed by that person via a website, and—

(a) the Welsh Ministers have published that notice on the website; and

(b) not less than four weeks before the date fixed by the Welsh Ministers for the holding of the inquiry, the person is notified of—

(i) the publication of the notice on the website;

(ii) the address of the website; and

(iii) where on the website the notice may be accessed, and how it may be accessed.

Notice of inquiry

16.—(1) The applicant must in two successive weeks publish a notice stating—

(a) the fact that the application or the variation application has been made, and the purpose of it, together with a description of the place to which it relates;

(b) where the inquiry relates to an application, that a copy of the application and the map referred to in it, can be inspected at the same location or locations used to display the map pursuant to regulation 7(2) of the Applications for Consent Regulations or, if in relation to any such location that is not possible, at a suitable alternative location as near to it as possible;

(c) where the inquiry relates to a variation application, a place in the locality where those likely to be affected by the proposed development live or work where a copy of the variation application and of the map referred to in it, can be inspected; and

(d) the location, date and time of the inquiry.

(2) A notice under paragraph (1) must be published in one or more local newspapers such that the notice is likely to come to the attention of those likely to be affected by the proposed development.

(3) If it appears to the Welsh Ministers that, in addition to the publication of a notice in accordance with paragraphs (1) and (2), further notification of the inquiry should be given (either by the service of notices, or by advertisement, or in any other way) in order to secure that the information specified in paragraph (1) is sufficiently made known to persons who are likely to be to be affected by the consent applied for if it is given, the Welsh Ministers may direct the applicant to take such further steps for that purpose as may be specified in the direction.

Appearances at inquiry

17.—(1) The persons entitled to appear at an inquiry are—

(a) the applicant;

(b) a qualifying planning authority;

(c) any of the following bodies if land to which the inquiry relates is situated in their area and they are not the relevant planning authority—

(i) a joint planning board constituted under section 2(1B) of the 1990 Act(**1**) (joint planning boards);

(ii) an urban development corporation established by the Welsh Ministers by order under section 135(1) of the Local Government, Planning and Land Act 1980(**2**) (urban development corporations);

(d) a qualifying objector who has returned a registration form in accordance with regulation 6(4)(a);

(e) any other person who has sent a statement of case in accordance with regulation 12(2).

(2) Nothing in paragraph (1) prevents the inspector from permitting any other person to appear at an inquiry, and such permission must not be unreasonably withheld.

(3) Any person entitled or permitted to appear may do so on their own behalf or be represented by any other person.

(4) An inspector may allow one or more persons to appear for the benefit of some or all of any persons having a similar interest in the matter under inquiry.

Proofs of evidence

18.—(1) Any person entitled to appear, who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence, must send two copies of the proof of evidence (in the case of a qualifying planning authority and the applicant) or three copies (in any other case) to the Welsh Ministers.

(2) Where a copy of a proof of evidence sent under paragraph (1) contains more than 1,500 words, it must be accompanied by a written summary, which, unless the inspector permits otherwise, must not contain more than 1,500 words.

(**1**) Subsection (1) was amended by paragraph 1 of Schedule 18 to the Local Government (Wales) Act 1994 (c. 19) and subsection (1B) was inserted into section 2 by section 19(1) of that Act.

(**2**) 1980 c. 65.

(3) Where a person sends copies of a proof of evidence and summary (if any), that person must at the same time send a copy to every other person whom that person knows to be entitled to appear unless such person has indicated in writing that they do not require to be sent a copy.

(4) The proof of evidence and any summary must be received by the Welsh Ministers no later than the date specified by the inspector pursuant to regulation 13(1)(b) or regulation 13(3)(b) and as soon as practicable after receipt, the Welsh Ministers must deposit each such proof of evidence and each such summary.

(5) The Welsh Ministers must send to the inspector, as soon as practicable after receipt, any proof of evidence together with any summary sent to them in accordance with this regulation.

(6) Any person required by paragraph (1) to send copies of a proof of evidence to the Welsh Ministers, must send with them the same number of copies of the whole, or the relevant part, of any document referred to in the proof of evidence, unless a copy of the document or part of the document in question is already available for inspection pursuant to regulation 12(13).

(7) The Welsh Ministers or the inspector may in writing require any person who has sent a copy of a proof of evidence or summary in accordance with this regulation to provide such additional copies of the proof or summary as they may specify and must specify the time within which the copy of the proof or summary must be received by them.

(8) Any person required to provide additional copies must ensure that the copies are received by the Welsh Ministers or the inspector within the specified time.

Statement of common ground

19.—(1) The Welsh Ministers may in writing require the relevant planning authority (where it is a local planning authority in Wales) and the applicant to prepare together an agreed statement of common ground.

(2) Where an agreed statement of common ground is prepared in accordance with paragraph (1), the applicant must—

(a) ensure that, by the date specified by the inspector under regulation 13(1)(b) or 13(3)(b), two copies of the statement have been received by the Welsh Ministers; and the Welsh Ministers must, as soon as practicable after receipt, deposit that statement;

(b) at the same time as the applicant sends the statement to the Welsh Ministers, send a copy of it to every other person whom the applicant

knows to be entitled to appear, except the relevant planning authority (where it is a local planning authority in Wales); and

(c) afford to any other person who so requests, a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of the statement.

Procedure at inquiry

20.—(1) Except as otherwise provided, the inspector must determine the procedure at an inquiry.

(2) At the start of the inquiry the inspector—

(a) must identify—

(i) the matters to be considered at the inquiry; and

(ii) any matters on which the inspector requires further explanation from the persons entitled or permitted to appear;

(b) may direct that in relation to such matters as the inspector may specify, either or both of the following are to apply—

(i) evidence is not to be read out at the inquiry (or where a summary of evidence is sent in accordance with regulation 18(4), that only the summary is to be read out); and

(ii) persons giving evidence are not to be subject to cross-examination on those matters.

(3) Nothing in paragraph (2) precludes any person entitled or permitted to appear from—

(a) referring to matters which they consider relevant to the consideration of the application or the variation application but which were not matters identified by the inspector pursuant to paragraph (2)(a); and

(b) making oral submissions on any matters which are the subject of a direction under paragraph (2)(b).

(4) Unless in any particular case the inspector otherwise determines—

(a) the applicant begins and has the right of final reply; and

(b) other persons entitled or permitted to appear are be heard in such order as the inspector may determine.

(5) Subject to any direction under paragraph (2)(b), a person entitled to appear is entitled to call evidence and the applicant and a qualifying planning authority are entitled to cross-examine persons giving evidence.

(6) The inspector may refuse to permit the—

(a) giving or production of evidence;

(b) cross-examination of persons giving evidence; or

(c) presentation of any other matter,

which the inspector considers to be irrelevant or repetitious; but where the inspector refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to the inspector any evidence or other matter in writing before the close of the inquiry.

(7) The inspector may refuse to permit the cross-examination of persons giving evidence, or may require such cross-examination to cease, if it appears to the inspector that permitting such cross-examination or allowing it to continue would have the effect that the timetable arranged by the inspector under regulation 13 could not be met.

(8) The inspector must not require or permit the giving or production of any evidence, whether written or oral, which the inspector considers would be contrary to the public interest; but otherwise, the inspector may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry.

(9) Where a person gives evidence at an inquiry by reading a summary of their proof of evidence received by the Welsh Ministers under regulation 18—

(a) the proof of evidence is to be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that they now wish to rely on the contents of that summary alone; and

(b) subject to any direction under paragraph (2)(b)(ii), the person whose evidence the proof of evidence contains is then to be subject to cross-examination on it to the same extent as if it were evidence they had given orally.

(10) Where the inspector gives a direction under paragraph (2)(b)(i), any proof of evidence received by the Welsh Ministers under regulation 18 which covers matters which are the subject of that direction must, to the extent that it covers those matters, be treated as tendered in evidence, unless—

(a) the person has provided a summary in accordance with regulation 18 and that person has notified the inspector that they now wish to rely on the contents of that summary alone, in which case the summary is to be treated as tendered in evidence to the extent that it covers the matters which are the subject of the direction;

(b) the person alters or adds to the proof of evidence under paragraph (13), in which case

the proof of evidence, as altered or added to, is to be treated as tendered in evidence to the extent that it covers the matters which are the subject of the direction; or

(c) the person who has sent the proof of evidence notifies the inspector that they no longer wish to give or call that evidence.

(11) The inspector may direct that facilities are afforded to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection.

(12) The inspector may—

(a) require any person appearing or present at an inquiry who, in the inspector's opinion, is behaving in a disruptive manner, to leave; and

(b) refuse to permit that person to return; or

(c) permit them to return only on such conditions as the inspector may specify,

but any such person may submit to the inspector any evidence or other matter in writing before the close of the inquiry.

(13) The inspector may allow any person to alter or add to a statement of case received by the Welsh Ministers under regulation 12 or a proof of evidence received by the Welsh Ministers under regulation 18 so far as may be necessary for the purposes of the inquiry; but the inspector must (if necessary by adjourning the inquiry) give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any such alteration or addition.

(14) The inspector may proceed with an inquiry in the absence of any person entitled to appear at it.

(15) The inspector may take into account any written representation or evidence or any other document received by the inspector from any person before an inquiry opens or during the inquiry provided that the inspector discloses it at the inquiry.

(16) The inspector may from time to time adjourn an inquiry and, if the date, time and location of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice is required.

(17) Any person who appears at an inquiry and makes closing submissions must by the close of the inquiry provide the inspector with a copy of their closing submission in writing.

Site inspections

21.—(1) The inspector may make an unaccompanied inspection of the place before or during an inquiry without giving notice of the inspector's intention to the persons entitled to appear.

(2) During an inquiry or after its close, the inspector may inspect the place in the company of the applicant, any qualifying planning authority, and, subject to paragraph (3), any qualifying objector who has returned a registration form in accordance with regulation 6(4)(a).

(3) Where the inspector inspects the place after the close of an inquiry, a qualifying objector is only entitled to accompany the inspector on that inspection if that objector appeared at the inquiry.

(4) In all cases where the inspector intends to make an accompanied site inspection the inspector must announce during the inquiry the date and time at which the inspector proposes to make it.

(5) The inspector is not bound to defer an inspection of the kind referred to in paragraph (2) where any person mentioned in that paragraph is not present at the time appointed.

Procedure after inquiry

22.—(1) After the close of an inquiry, the lead inspector must make a report in writing to the Welsh Ministers which must include—

(a) the lead inspector's consideration of the application or the variation application;

(b) the consideration by any additional inspector of the matters relating to the application or the variation application which that additional inspector has been directed to consider;

(c) the lead inspector's conclusions; and

(d) the lead inspector's recommendations or reasons for not making any recommendation.

(2) Where an assessor has been appointed, the assessor may, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which the assessor was appointed to advise.

(3) Where an assessor makes a report in accordance with paragraph (2), the inspector must append it to the inspector's own report and must state in that report how far the inspector agrees or disagrees with the assessor's report and, where the inspector disagrees with the assessor, the reasons for that disagreement.

(4) When making their decision the Welsh Ministers may disregard any written representations, evidence or any other document received after the close of the inquiry.

(5) If, after the close of an inquiry, the Welsh Ministers—

(a) differ from an inspector on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the inspector; or

(b) take into consideration any new evidence or new matter of fact (not being a matter of Welsh Ministers' policy),

and for that reason are disposed to disagree with a recommendation made by the lead inspector, they must not come to a decision which is at variance with that recommendation without first notifying in writing the persons entitled to appear who appeared at the inquiry of their disagreement and the reasons for it; and affording them an opportunity of making written representations to them or (if the Welsh Ministers have taken into consideration any new evidence or new matter of fact, not being a matter of Welsh Ministers' policy) of asking for the re-opening of the inquiry.

(6) Those persons making written representations or requesting the inquiry to be re-opened under paragraph (5) must ensure that such representations or requests are received by the Welsh Ministers within three weeks of the date of the Welsh Ministers' notification under that paragraph.

(7) The Welsh Ministers may, as they think fit, cause an inquiry to be re-opened, and they must do so if asked by the applicant or a qualifying planning authority in the circumstances mentioned in paragraph (5) and within the period mentioned in paragraph (6).

(8) Where an inquiry is re-opened (whether by the same or a different lead inspector)—

(a) the Welsh Ministers must send to the persons entitled to appear who appeared at the inquiry a written statement of the matters with respect to which further evidence is invited;

(b) paragraphs (3) to (7) of regulation 15 apply in relation to the re-opened inquiry as if references in those paragraphs to an inquiry were references to the re-opened inquiry; and

(c) paragraphs (5) and (6) of regulation 10 apply in relation to the re-opened inquiry as if references in those paragraphs to the pre-inquiry meeting were references to the re-opened inquiry.

Notification of decision

23.—(1) The Welsh Ministers must, as soon as practicable, notify their decision on an application or variation application, and their reasons for it, in writing to—

(a) the applicant;

(b) all persons entitled to appear who did appear; and

(c) any other person who, having appeared at the inquiry, has asked to be notified of the decision.

(2) Notification in writing of a decision and reasons are taken to have been given to a person for the purposes of this regulation where—

(a) the Welsh Ministers and the person have agreed that decisions and reasons required under this regulation to be given in writing may instead be accessed by that person via a website;

(b) the decision and reasons are a decision and reasons to which that agreement applies;

(c) the Welsh Ministers have published the decision and reasons on a website; and

(d) the person is notified, in the manner for the time being agreed between that person and the Welsh Ministers, of—

(i) the publication of the decision and reasons on a website;

(ii) the address of the website; and

(iii) where on the website the decision and reasons may be accessed, and how they may be accessed.

(3) Where a copy of the lead inspector's report is not sent with the notification of the decision, the notification must be accompanied by a statement of the lead inspector's conclusions and of any recommendations made by the lead inspector, and if a person entitled to be notified of the decision has not received a copy of that report, that person must be supplied with a copy of it on written application to the Welsh Ministers.

(4) In this regulation "report" includes any assessor's report appended to an inspector's report and an additional inspector's report appended to the lead inspector's report but does not include any other documents so appended; but any person who has received a copy of the report may apply to the Welsh Ministers in writing, within six weeks of the date of the Welsh Ministers' decision, for an opportunity of inspecting any such documents and the Welsh Ministers must afford that person that opportunity.

(5) Any person applying to the Welsh Ministers under paragraph (3) must ensure that their application is received by the Welsh Ministers within four weeks of the Welsh Ministers' decision.

Procedure following quashing of decision

24.—(1) Where a decision of the Welsh Ministers on an application or a variation application in respect of which an inquiry has been held, is quashed in proceedings before any court, the Welsh Ministers—

(a) must send to the persons entitled to appear who appeared at the inquiry a written statement of the matters with respect to which

further representations are invited for the purposes of their further consideration of the application or the variation application;

(b) must afford to those persons the opportunity of making written representations to them in respect of those matters or of asking for the re-opening of the inquiry; and

(c) may, as they think fit, cause the inquiry to be re-opened (whether by the same or a different lead inspector).

(2) Where the Welsh Ministers cause an inquiry to be re-opened—

(a) paragraphs (3) to (7) of regulation 15 apply in relation to the re-opened inquiry as if references in those paragraphs to an inquiry were references to the re-opened inquiry; and

(b) paragraphs (5) and (6) of regulation 10 apply in relation to the re-opened inquiry as if references in those paragraphs to the pre-inquiry meeting were references to the re-opened inquiry.

(3) Those persons making representations or asking for the inquiry to be re-opened under paragraph (1)(b) must ensure that such representations or requests are received by the Welsh Ministers within three weeks of the date of the written statement sent under paragraph (1)(a).

Allowing further time

25. The Welsh Ministers may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of these Regulations and references in these Regulations to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly.

Additional copies

26.—(1) The Welsh Ministers may at any time before the close of an inquiry request from any person entitled or permitted to appear additional copies of the following—

(a) an outline statement (as mentioned in regulation 6(4)(c)) sent in accordance with regulation 6(4)(a);

(b) a statement of case or comments sent in accordance with regulation 12;

(c) a proof of evidence sent in accordance with regulation 18; or

(d) any other document or information sent to the Welsh Ministers before or during an inquiry,

and must specify the time within which such documents should be received by them.

(2) Any person so requested must ensure that the copies are received by the Welsh Ministers within the period specified.

Sending of notices and inspection of documents

27.—(1) Notices or documents required or authorised to be sent under these Regulations may be sent—

(a) by post; or

(b) by using electronic communications to send or supply the notice or document to a person at such address as may for the time being be specified by the person for that purpose.

(2) Where the relevant planning authority, or as the case may be, an interested authority, is under an obligation to afford to any person who so requests an opportunity to inspect and take copies of any document, an opportunity is to be taken to have been afforded to a person where the person is notified of—

(a) publication of the relevant document on a website;

(b) the address of the website; and

(c) where on the website the document may be accessed, and how it may be accessed.

Julie James
Minister for Housing and Local Government, one of the Welsh Ministers
18 February 2019

Explanatory Memorandum to:

1) **The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019.**
2) **The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019.**
3) **The Electricity (Offshore Generating Stations (Inquiries Procedure) (Wales) Regulations 2019.**
4) **The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019.**
5) **The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019.**

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the:

1) The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019;
2) The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019;
3) The Electricity (Offshore Generating Stations (Inquiries Procedure) (Wales) Regulations 2019;
4) The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019; and
5) The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019.

Julie James
Minister for Housing and Local Government
20 February 2019

PART 1

1. Description

1.1 Sections 39 to 41 of the Wales Act 2017 (“the 2017 Act”) among other things, devolve to the Welsh Ministers:

- responsibility for the consenting of offshore generating stations in Welsh waters with a capacity up to and including 350MW; and
- other associated functions such as the ability to extinguish public rights of navigation and provision relating to safety zones around renewable energy installations.

These provisions will be fully commenced on 1 April 2019.

1.2 As a result of amendments to the Electricity Act 1989 (“the 1989 Act”) and the Planning Act 2008 (“the 2008 Act”) made by the 2017 Act the Welsh Ministers are the appropriate (consenting) authority in relation to applications made after 1 April 2019 under sections 36 and 36C of the 1989 Act relating to generating stations (or proposed generating stations) in Welsh waters (as defined in section 36 of the 1989 Act) which have or will have a capacity not exceeding 350MW.

1.3 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 make provision about the grant of consents under section 36 of the 1989 Act (“ a section 36 consent”) in relation to generating stations in respect of which the Welsh Ministers are the appropriate authority. These Regulations include provision about the making of applications, service and publicity requirements, the circumstances in which public inquiries are to be held and the scope of public inquiries where there is more one or more relevant planning authority. They also make consequential amendments to the Conservation of Habitats and Species Regulations 2017.

1.4 The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 make provision about applications to vary a section 36 consent under section 36C of the 1989 Act where the Welsh Ministers are the appropriate authority. These Regulations include provision about what must be included in or accompany a variation application, notification and publicity requirements, when public inquiries are to be held and the withdrawal of variation application. They also revoke the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 in so far as they apply to an application to the Welsh Ministers under section 36C of the 1989 Act.

1.5 The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 make provision about inquiries caused to be held by the Welsh Ministers in relation to applications under sections 36 and 36C of the 1989 Act.

1.6 The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019 amend the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 to provide the Welsh Ministers are the 'relevant authority' where an application under section 36 or 36C of the 1989 Act is made (or to be made) to the Welsh Ministers. They also amend the meaning of consultation body and insert reference to the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 in two regulations.

1.7 The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019 make minor amendments to the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 to reflect the change in responsibilities from the Secretary of State to the Welsh Ministers for declaring safety zones in Welsh waters.

2. Matters of special interest to the Constitutional and legislative Affairs Committee

2.1 There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative Background

Electricity Act 1989 SIs

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019

3.1 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 36(8A) (which is inserted into section 36 by paragraph 47 of Schedule 6 to the 2017 Act) and 60 of the 1989 Act.

3.2 Section 36(8A) gives the Welsh Ministers power to make provision about the grant of consents under section 36 of the 1989 Act in relation to generating stations in respect of which they are the appropriate authority.

3.3 Section 60 of the 1989 Act contains supplemental powers in relation to regulations made under Part 1 of the 1989 Act, regulations made under section 36(8A) of the 1989 Act are made under Part 1 of that Act.

3.4 These Regulations are made using the negative resolution procedure.

The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019

3.5 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by section 36C(2) and (6) (as amended by section 39(12) of the 2017 Act) and 60 of the 1989 Act.

3.6 Section 36C(2) and (6) give the Welsh Ministers power to make provision about the variation of a consent under Section 36 of the 1989 Act relating to generating stations (or proposed generating stations) in Welsh waters that do not or will not when constructed or extended exceed 350MW.

3.7 As mentioned at paragraph 3.3 above section 60 of the 1989 Act contains supplemental powers in relation to regulations made under Part 1 of the 1989 Act, regulations made under section 36C of the 1989 Act are regulations made under Part 1 of that Act.

3.8 These Regulations are made using the negative resolution procedure.

The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019

3.9 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 36(8A), 36C(2) and(6) and 60 of the 1989 Act. These provisions are described at paragraphs 3.1 to 3.8 above.

3.10 These Regulations are made using the negative resolution procedure.

The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019

3.11 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 36(8A), 36C(2) and (6) and 60 of the 1989 Act. These provisions are described at paragraphs 3.1 to 3.8 above.

3.12 These Regulations are made using the negative resolution procedure.

Energy Act 2004 SI

The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019

3.13 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 96 and 192 of, and paragraph 4(1) of Schedule 16 to, the Energy Act 2004 ("the 2004 Act").

3.14 Section 41 of the 2017 Act amends sections 95, 96 and 104 of the Energy Act 2004 to enable the Welsh Ministers to exercise functions in relation to declaring safety zones around offshore renewable energy installations with a capacity of up to 350MW in Welsh waters.

3.15 Sections 95-98 of, and Schedule 16 to, the 2004 Act make provision for safety zones applying to offshore renewable energy installations. The essence of a safety zone is it is a criminal offence for vessels to enter or remain in a safety zone unless permitted to do so by means of a safety zone notice issued by the appropriate Minister (in Welsh waters, the Welsh Ministers).

3.16 Section 96 prohibits vessels from entering or remaining in a safety zone and carrying out activities except where permitted to do so by a notice declaring a safety zone. Section 41 of the Wales Act 2017 amends section 96 so that the Welsh Ministers can make regulations setting out general permissions allowing vessels to enter any safety zone and carry out activities. This is in addition to any individual permissions granted in the notice declaring that safety zone.

3.17 Section 192 sets out supplemental powers in relation to regulations made under the Energy Act 2004.

3.18 Schedule 16 to the Energy Act 2004 sets out the process for applying for a safety zone notice under section 95. Paragraph 4(1) of Schedule 16, among other things, enables the Welsh Ministers to prescribe the circumstances where notice should be be served on persons specified either in regulations or in in directions.

3.19 These Regulations are made using the negative resolution procedure.

4. Purpose and Effect

4.1 The Wales Act 2017 (Commencement No.4) Regulations 2017 fully commences the relevant sections of the 2017 Act, in relation to the consenting of generating stations in Welsh waters up to and including 350MW, on 1 April 2019.

4.2 Section 36 of the 1989 Act has historically been the relevant consenting route for offshore generating stations in Welsh waters between 1MW and 100MW, albeit decisions are made by the Marine Management Organisation on behalf of the Secretary of State prior to 1 April 2019. For offshore generating stations of between 100MW and 350MW, developers have been required to obtain a Development Consent Order under the 2008 Act. The 2017 Act makes amendments to the 1989 Act and the 2008 Act which apply the section 36 consent process under the 1989 Act to offshore generating stations in Welsh waters (as defined in section 36 of the 1989 Act) which have or will have a capacity not exceeding 350MW. The Welsh Ministers will be the appropriate consenting authority for such consents.

4.3 The procedure for determining applications for a section 36 consent is currently set out at Schedule 8 of the 1989 Act, along with accompanying regulations. As a consequence of the 2017 Act, Schedule 8 will not apply to applications made to the Welsh Ministers. The purpose of the following SIs made under the 1989 Act is to provide a procedure for applications for section 36 consents and variation of section 36 consents. For continuity and to provide a known operable process, it is intended to restate with minor amendments the existing procedures for such applications.

Electricity Act 1989 SIs

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019

4.4 Schedule 8 of the 1989 Act (amongst other matters) sets out the procedure for applications for section 36 consents. This is supplemented by the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006. As a consequence of paragraph 8(1A) of Schedule 8 to the 1989 Act (as inserted by the Wales Act 2017), Schedule 8 will not apply to applications to the Welsh Ministers. The 2006 Regulations were made under powers in Schedule 8. Therefore, the procedures in Schedule 8 and the 2006 Regulations will not apply to applications for a section 36 consent made to the Welsh Ministers.

4.5 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 make provision about the grant of section 36 consents Act to construct, extend or operate an offshore generating station. They make equivalent provision to relevant provisions in Schedule 8 to the 1989 Act and the 2006 Regulations with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority.

4.6 The purpose of these Regulations is purely for operability and will not introduce new policy or changes to the existing procedure followed in relation to applications under section 36 of the 1989 Act. This approach provides continuity for those developments between 1MW and 100MW which would be dealt with under the 1989 Act. Some minor changes are required to reflect the consenting role being undertaken by the Welsh Ministers and to reflect the existence of different consultation bodies in Wales.

The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019

4.7 The Electricity (Offshore Generating Stations) (Variation of Consents) (England and Wales) Regulations 2013 ("the 2013 Regulations") set out the procedure for applications to vary a section 36 consent under section 36C of the 1989 Act. Prior to amendments made to sections 36 and 36C of the 1989 Act by the 2017 Act all applications under section 36C were made to the Marine Management Organisation or the Secretary of State.

4.8 The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 make provision about applications to the Welsh Ministers under section 36C of the 1989 Act where the Welsh Ministers are the appropriate (consenting) authority. They make equivalent provision to the 2013 Regulations with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority. The Regulations will not introduce new policy or changes to the existing procedure followed in relation to applications under section 36C of the 1989 Act.

The Electricity (Offshore Generating Stations (Inquiries Procedure) (Wales) Regulations 2019

4.9 The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 ("the 2007 Rules") set out the procedure where an inquiry is caused to held by the Secretary of State into an application under sections 36 of the 1989 Act. The 2007 Rules are applied (with modifications) to an inquiry into a section 36C application by the 2013 Regulations.

4.10 The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 set out the procedure to be followed where the Welsh Ministers cause an inquiry to be held into an application under section 36 or 36C of the 1989 Act. They make equivalent provision to that found in the 2007 Rules with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority.

The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019

4.11 The effect of these Regulations is to amend the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 to provide the Welsh Ministers are the 'relevant authority' where an application under section 36 or 36C of the 1989 Act is made (or to be made) to the Welsh Ministers. A number of minor amendments are also made. The amendments have been made a result of the amendments to section 36 and 36C of the 1989 Act by the 2017 Act to reflect the Welsh Ministers new consenting role under those provisions.

Energy Act 2004 SI

The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019

4.12 The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 ("the 2007 Regulations") set out procedural requirements in respect of a safety zone application, as well as prescribing categories of vessels and activities permitted in safety zones.

4.13 The purpose of these Regulations is to make amendments to the 2007 Regulations for operability and to reflect the change in responsibilities where the Welsh Ministers are the appropriate Minister.

4.14 The effect of the Regulations is to provide that the Welsh Ministers do not need to be notified of a safety zone application in Welsh waters where they are the appropriate Minister, and they set out additional vessels permitted in safety zones where they are the appropriate Minister.

5. Consultation

5.1 A 12 week consultation ran from 30 April to 23 July 2018 on changes to the consenting of infrastructure in Wales. The consultation was drawn to the attention of a wide range of stakeholders including LPAs, generating station operators and their representatives, businesses, planning consultants, interest groups and other public sector agencies. A total of 47 responses were received.

5.2 Question 4 related to proposed arrangements for offshore generating stations. A number of respondents, while agreeing with the logic of the approach in the short-term, commented the long term vision must be to unify consenting

regimes on and offshore. A number of respondents commented the interaction between the consent under the Electricity Act 1989 and the associated marine licence must be reviewed by the Welsh Government, to ensure a good level of service, concurrent decision and to reduce duplication of workload. In response, it is intended to continue to work with Natural Resources Wales to establish appropriate working arrangements.

5.3 A summary of the consultation responses is available at:

https://beta.gov.wales/changes-approval-infrastructure-development .

6. Regulatory Impact Assessment

6.1 The requirement for a Regulatory Impact Assessment ("RIA") has been assessed against the RIA code for subordinate legislation. In this instance, an RIA was not considered necessary.

6.2 These statutory instruments are made as a consequence of sections 39 to 41 of the 2017 Act insofar as they affect the devolution of the consenting of offshore generating stations. These sections will be fully commenced on 1 April 2019.

6.3 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019, the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 and the Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 make equivalent provision to relevant provisions of the Schedule 8 to the 1989 Act, the 2006 Regulations, the 2013 Regulations and the 2007 Rules with minor amendments to reflect the Welsh Ministers consenting role. The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019 and the Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019 make minor amendments to the procedure in relation safety zones under section 95 of the Energy Act 2004 and to the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017.

6.4 Accordingly, as these statutory instruments comprise routine technical and consequential amendments to the existing procedures under the 1989 Act and the Energy Act 2004 which have no policy impact, no RIA is required.

6.5 The 2017 Act, which made amendments to the 1989 Act, the 2004 Act and 2008 Act, however, was accompanied by an RIA which assessed the costs

and benefits of the devolution of energy consenting functions under the 1989 Act and the 2004 Act.

6.6 The RIA which accompanied the 2017 Act during its passage is available at:

https://webarchive.nationalarchives.gov.uk/20160611073307/https:/www.gov.uk/government/uploads/system/uploads/attachment_data/file/527740/Wales_Bill_impact_assessment.pdf .

SL(5)344 – The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations

Background and Purpose

These Regulations make provision about applications to the Welsh Ministers to vary consents for the construction, extension and operation of certain offshore electricity generating stations in Welsh waters that have been granted under section 36 of the Electricity Act 1989 (the "1989 Act").

Section 36C of the 1989 Act will allow, from 1 April 2019, a person entitled to the benefit of a section 36 consent to apply to the Welsh Ministers, for that consent to be varied, in certain circumstances. This will be possible where the consent relates to a generating station (or proposed generating station) in Welsh waters that does not (or will not) exceed 350 megawatts.

These Regulations make provision about the making of variation applications to the Welsh Ministers. This includes:

- what needs to be included in, or accompanying, a variation application;
- notification and publicity requirements;
- when public inquiries are to be held;
- the withdrawal of variation applications; and
- extending the time allowed for a given step to be taken under these Regulations.

These Regulations also revoke the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 in so far as they apply to an application to the Welsh Ministers under section 36C of the 1989 Act.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(v) that for any particular reason its form or meaning needs further explanation

Regulation 5(5)(c) notes that a variation application must be published "…in one or more national newspapers". However, the Regulations does not specify whether "national" refers to a Welsh national newspaper or a UK newspaper.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3(ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

Regulation 2 includes various definitions which are used in the Regulations. The definition of "relevant planning authority" is said to include (in the circumstances listed in the Regulations) a local planning authority in England and Wales and the Department of the Environment in Northern Ireland, (as identified by the applicant under regulation 3(1)(e) or by the Welsh Ministers under regulation 4(7), as being likely to have an interest in the application). This definition does not include references to appropriate corresponding bodies in Scotland or the Isle of Man. We understand that the reason for not including Scotland in these provisions is due to the distance between Welsh waters and Scotland. However, the reasoning as to why the Isle of Man has not been included within this definition is unclear.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

Technical Scrutiny

The technical scrutiny element of the draft report refers to one drafting error. The draft report notes that regulation 5(5)(c) provides that a variation application must be published… "in one or more national newspapers". However the Regulations do not specify whether "national" refers to a Welsh national newspaper or a UK newspaper.

The Government's position is as follows.

Regulation 5(5)(c) of the Regulations provides that the Applicant must publish notice of the variation application "in Lloyd's List and in one or more national newspapers". Because Lloyd's list is a UK publication the reference to "national newspapers" in the context in which it appears is a reference to UK newspapers.

The Regulations also make clear that bodies outside Wales could have an interest in a variation application (see definition of "relevant planning permission" in regulation 2). Therefore in the context of the Regulations as a whole the reference to "national newspapers" in regulation 5(5)(c) is a reference to UK newspapers.

Therefore an amendment to address the technical scrutiny point is not considered necessary.

Merits Scrutiny

The merits scrutiny element of the draft report is concerned with the definition of "relevant planning authority" in regulation 2. It is noted that the reasoning as to why a corresponding body in the Isle of Man has not been included within this definition is unclear.

As explained at paragraph 4.8 of the Explanatory Memorandum to the Regulations the policy intention is make equivalent provision to the Electricity (Offshore Generating Stations) (Variation of Consents) (England and Wales) Regulations 2013 ("the 2013 Regulations") with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority. The Regulations do not introduce new policy or changes to the existing procedure. A body in the Isle of Man is not a relevant planning authority for

the purposes of the 2013 Regulations. The definition of "relevant planning authority" in the Regulations is consistent with the definition in the 2013 Regulations and therefore accords with the policy intent.

Legal Advisers

Constitutional and Legislative Affairs Committee

13 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 297 (W. 75)

ELECTRICITY, WALES

The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about applications to the Welsh Ministers to vary consents for the construction, extension and operation of certain offshore electricity generating stations in Welsh waters that have been granted under section 36 of the Electricity Act 1989 ("the 1989 Act" and such consents "section 36 consents").

Under section 36C of the 1989 Act the person for the time being entitled to the benefit of the section 36 consent may, from 1 April 2019, apply to the Welsh Ministers for that consent to be varied where it relates to a generating station (or proposed generating station) in Welsh waters that does not or will not when constructed or extended exceed 350 megawatts.

"Welsh waters" means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales, and the Welsh zone (within the meaning of the Government of Wales Act 2006).

These Regulations make provision about—

(a) what must be included in or accompany a variation application;

(b) notification and publicity requirements;

(c) when public inquiries are to be held;

(d) the withdrawal of variation applications; and

(e) extending the time allowed for a given step under these Regulations.

The Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 are revoked so far as they apply to an application to the Welsh Ministers under section 36C of the 1989 Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2019 No. 297 (W. 75)

ELECTRICITY, WALES

The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019

Made *18 February 2019*

Laid before the National Assembly for Wales *20 February 2019*

Coming into force *1 April 2019*

The Welsh Ministers, in exercise of the powers conferred on them by sections 36C(2) and (6) and 60 of the Electricity Act 1989(**1**), make the following Regulations:

Title and commencement

1. The title of these Regulations is the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 and they come into force on 1 April 2019.

Interpretation

2. In these Regulations—

"the Act" ("*y Ddeddf*") means the Electricity Act 1989;

"the 1990 Act" ("*Deddf 1990*") means the Town and Country Planning Act 1990(**2**);

"the EIA Regulations" ("*y Rheoliadau AEA*") means the Electricity Works (Environmental

(**1**) 1989 c. 29. Section 36C was inserted by section 20(1) and (2) of the Growth and Infrastructure Act 2013 (c. 27) ("the 2013 Act") and was amended by section 39(12) of, and paragraph 48 of Schedule 6 to, the Wales Act 2017 (c. 4) ("the 2017 Act"). Amendments to section 60 are not relevant to these Regulations.

(**2**) 1990 c. 8.

Impact Assessment) (England and Wales) Regulations 2017(**1**);

"applicant" ("*ceisydd*") means a person who has the benefit of a section 36 consent and makes a variation application in respect of it;

"development" ("*datblygiad*") has the meaning given in section 55 of the 1990 Act(**2**) (meaning of "development" and "new development");

"generating station" ("*gorsaf gynhyrchu*") includes a proposed generating station(**3**);

"proposed development" ("*datblygiad arfaethedig*") means—

(a) the generating station, or extension of a generating station, which the applicant would be authorised to construct under a relevant section 36 consent if that consent were varied as requested in a variation application;

(b) the way in which a generating station so constructed or extended would be authorised to be operated under the relevant section 36 consent as so varied; and

(c) any section 90 development in respect of which section 36 consent is not required;

"relevant planning authority" ("*awdurdod cynllunio perthnasol*") means in the case of a variation application, or a request for a section 90 direction which accompanies the variation application, any of the following bodies—

(a) a local planning authority (within the meaning of Part 1 of the 1990 Act (local planning authorities: general)) in England and Wales;

(b) the Department of the Environment in Northern Ireland,

which are identified by the applicant under regulation 3(1)(e) or by the Welsh Ministers under regulation 4(7);

"relevant section 36 consent" ("*cydsyniad adran 36 perthnasol*") means the section 36 consent in respect of which a variation application is made;

(**1**) S.I. 2017/580, to which there are amendments not relevant to these Regulations.

(**2**) Section 55 was amended by sections 13(1) and (2) and 14 of, and paragraph 9 of Schedule 6, and Schedule 19 to, the Planning and Compensation Act 1991 (c. 34), section 49(1) of, and paragraphs 1 and 2 of Schedule 6, and Schedule 9 to, the Planning and Compulsory Purchase Act 2004 (c. 5) and by S.I. 1999/293.

(**3**) *See* section 64(1) of the Electricity Act 1989 ("the 1989 Act") for the interpretation of "generating station".

"section 36 consent" ("*cydsyniad adran 36*") means a consent under section 36 of the Act(**1**) (consent required for construction etc. of generating stations) including any variations to that consent made under section 36C(4) of the Act which relates to a generating station in Welsh waters (within the meaning of section 36 of the Act) that does not or will not when constructed or extended exceed 350 megawatts;

"section 90 development" ("*datblygiad adran 90*") means any development in respect of which—

(a) a section 90 direction was given on granting the relevant section 36 consent; or

(b) the applicant, on making a variation application, requests the Welsh Ministers to give a section 90 direction;

"section 90 direction" ("*cyfarwyddyd adran 90*") means a direction under section 90(2) or (2ZA) of the 1990 Act(**2**) (deemed planning permission for development with government authorisation);

"variation application" ("*cais amrywio*") means an application to the Welsh Ministers to vary a section 36 consent made under section 36C(1) of the Act.

Content of variation applications

3.—(1) A variation application must—

(a) be made in writing;

(b) describe the location of the proposed development by reference to a map;

(c) state—

(i) why it is proposed that the relevant section 36 consent should be varied;

(ii) what account has been taken of views expressed by persons who have been consulted by the applicant about the proposed variation;

(d) include—

(i) a draft of the variations which the applicant proposes should be made to the relevant section 36 consent; and

(ii) copies of any maps or plans not referred to in the relevant section 36 consent but

(**1**) Section 36 was amended by section 93 of the Energy Act 2004 (c. 20), paragraphs 31 and 32 of Schedule 2 to the Planning Act 2008 (c. 29), section 12(7) and (8) of the Marine and Coastal Access Act 2009 (c. 23), section 78 of the Energy Act 2016 (c. 20) and section 39(7) to (11) of, and paragraph 47 of Schedule 6 to, the 2017 Act. Other amendments are not relevant to these Regulations.

(**2**) Section 90(2) and (2ZA) were substituted by section 21(2) of the 2013 Act and were amended by section 39(13) of the 2017 Act.

which the applicant proposes that the relevant section 36 consent should refer to after it is varied; and

(e) identify which of the bodies referred to in the definition of "relevant planning authority" in regulation 2 are, in the applicant's opinion, likely to have an interest in the variation application.

(2) A variation application must include particulars of—

(a) the relevant section 36 consent, and, if that consent was not granted to the applicant, how the applicant has the benefit of that consent;

(b) any section 90 direction given on granting the relevant section 36 consent;

(c) any permit, licence, consent or other authorisation (other than the relevant section 36 consent) given in connection with the construction or operation of the proposed development (a "relevant authorisation"), including any variation or replacement of a relevant authorisation; and

(d) any application that has been made for a relevant authorisation or variation of a relevant authorisation.

(3) Where the applicant requests the Welsh Ministers to give a section 90 direction on varying the relevant section 36 consent, the application must—

(a) identify the section 90 development in respect of which that request is made and describe its location by reference to a map;

(b) state—

(i) why it is proposed that the direction should be made; and

(ii) what account has been taken of views expressed by persons who have been consulted by the applicant about the proposed direction; and

(c) include—

(i) a draft of the proposed direction; and

(ii) copies of any maps or plans to which it is proposed that the section 90 direction should refer which are not—

(aa) referred to in the relevant section 36 consent or any section 90 direction given on granting the relevant section 36 consent; or

(bb) included in the application in accordance with paragraph (1)(d)(ii).

Assessment of suitability for publication

4.—(1) Where the Welsh Ministers receive a variation application, they must—

(a) consider whether or not it is suitable for publication in accordance with regulation 5; and

(b) give the applicant a notice under paragraph (2) or (6) within three weeks of receipt.

(2) If the Welsh Ministers do not consider that the application is suitable for publication, they must give notice to the applicant—

(a) of their decision and the reasons for that decision; and

(b) that it may make representations to the Welsh Ministers with a view to persuading the Welsh Ministers that the application is suitable for publication.

(3) Where the Welsh Ministers give notice under paragraph (2), they must—

(a) specify in writing a date by which any representations under paragraph (2)(b) are to be made; and

(b) if the applicant fails to make representations by the date so specified, give the applicant a refusal notice.

(4) Paragraph (5) applies where the applicant makes representations to the Welsh Ministers further to a notice given to it under paragraph (2)(b).

(5) If, having considered the applicant's representations, the Welsh Ministers—

(a) still consider that the application is not suitable for publication, they must give a further notice under paragraph (2) or a refusal notice; or

(b) consider that the application is suitable for publication, they must give a notice under paragraph (6).

(6) If the Welsh Ministers consider that the application is suitable for publication, they must give the applicant notice of their decision.

(7) Where—

(a) paragraph (6) applies; and

(b) there are bodies referred to in the definition of "relevant planning authority" in regulation 2—

(i) that the Welsh Ministers consider are likely to have an interest in the application; and

(ii) that have not been identified by the applicant under regulation 3(1)(e),

the Welsh Ministers must identify those bodies in the notice given under paragraph (6).

(8) For the purposes of this regulation, a variation application is suitable for publication in accordance with regulation 5 if—

(a) in a case where an EIA report is required to be prepared in connection with the variation application under the EIA Regulations (because the application is for EIA development within the meaning of those Regulations), an EIA report has been provided to the Welsh Ministers; and

(b) it appears to the Welsh Ministers that—

(i) the applicant wishes to construct, operate or extend a generating station in a way which the relevant section 36 consent does not authorise it to do;

(ii) the proposed development does not differ from the generating station to which the relevant section 36 consent refers to such an extent (in its construction, extension, operation or likely environmental effects) that it requires authorisation by—

(aa) an order granting development consent within the meaning of section 31 of the Planning Act 2008(**1**) (when development consent is required); or

(bb) a new section 36 consent (rather than a variation to the relevant section 36 consent); and

(iii) there is sufficient information in the application to enable the Welsh Ministers to determine the application.

(9) In this regulation—

(a) "EIA report" has the meaning given in the EIA Regulations;

(b) a "refusal notice" is a notice that the Welsh Ministers have decided under section 36C(4) of the Act that it would not be appropriate to make any variation to the relevant section 36 consent.

Publication

5.—(1) Where an applicant has received a notice under regulation 4(6), the variation application must be published, and its publication advertised, in accordance with this regulation.

(**1**) 2008 c. 29.

(2) The applicant or, where paragraph (3) applies, the Welsh Ministers must publish on a website (the "application website")—

(a) a summary of the variation application;

(b) the application;

(c) a link to the relevant section 36 consent, any section 90 direction given on granting the relevant section 36 consent and any statement (in the form of a decision letter, decision notice or otherwise) given by the appropriate authority(**1**) under regulation 10(3) of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000(**2**) or regulation 33 of the EIA Regulations on granting the relevant section 36 consent.

(3) This paragraph applies where the Welsh Ministers notify the developer in writing that the Welsh Ministers will comply with the obligations in paragraph (2).

(4) The applicant must serve a copy of the application on the relevant planning authority (if any).

(5) The applicant must publish notice of the variation application—

(a) in two successive weeks in one or more local newspapers which are likely to come to the attention of those likely to be affected by the proposed development;

(b) in the London Gazette;

(c) in Lloyd's List and in one or more national newspapers; and

(d) if there are in circulation one or more appropriate fishing trade journals which are published at intervals not exceeding one month, in at least one such trade journal.

and serve a copy of the notice on the relevant planning authority (if any).

(6) The notice required by paragraph (5) must—

(a) not be published before the applicant has complied with paragraphs (2) and (4) or, where paragraph (3) applies, the Welsh Ministers have complied with paragraph (2) and the applicant has complied with paragraph (4);

(b) state—

(**1**) *See* section 36C(6) of the 1989 Act for the meaning of "appropriate authority".

(**2**) S.I. 2000/1927 which was amended by S.I. 2007/1977 and revoked by S.I. 2017/580 subject to the transitional provision as specified in regulation 42 of that instrument.

(i) that a variation application has been made and that the applicant has received a notice under regulation 4(6);

(ii) the address of the application website, and that further information about the application is to be found on the application website;

(iii) the date, not less than four weeks after the date on which the last notice is to be published, by which any person other than a relevant planning authority must send objections to the proposed development, or other representations about the application, to the Welsh Ministers; and

(iv) the address to which any such representations are to be sent; and

(c) identify—

(i) the applicant;

(ii) the relevant section 36 consent;

(iii) the generating station to which it relates; and

(iv) a place which is reasonably accessible to those likely to be affected by the proposed development where copies of the variation application may be inspected.

Public inquiries into variation applications

6.—(1) The Welsh Ministers may cause a public inquiry to be held into a variation application if they consider it appropriate to do so having considered—

(a) any representations made about a variation application to the Welsh Ministers—

(i) which a relevant planning authority makes within two months of the date on which a copy of the application was served on it under regulation 5(4); and

(ii) which any other person makes on or before the date specified in accordance with regulation 5(6)(b)(iii),

where those representations are not withdrawn; and

(b) all other material considerations.

(2) If the Welsh Ministers cause a public inquiry to be held into a variation application they may do so in addition to or instead of any other hearing or opportunity to make representations about the application.

Withdrawal of variation applications

7.—(1) An applicant may withdraw a variation application at any time by notice in writing to the Welsh Ministers.

(2) If a variation application is withdrawn after it has been published in accordance with regulation 5, the Welsh Ministers must notify the relevant planning authority and the consultation bodies within the meaning of the EIA Regulations that it has been withdrawn.

Allowing further time

8. The Welsh Ministers may in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of these Regulations, and references in these Regulations to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly.

Revocation

9. The Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013(**1**) are revoked so far as they apply to a variation application.

Julie James
Minister for Housing and Local Government, one of the Welsh Ministers
18 February 2019

(**1**) S.I. 2013/1570 which was amended by S.I. 2017/580.

Explanatory Memorandum to:

1) **The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019.**
2) **The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019.**
3) **The Electricity (Offshore Generating Stations (Inquiries Procedure) (Wales) Regulations 2019.**
4) **The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019.**
5) **The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019.**

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the:

1) The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019;
2) The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019;
3) The Electricity (Offshore Generating Stations (Inquiries Procedure) (Wales) Regulations 2019;
4) The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019; and
5) The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019.

Julie James
Minister for Housing and Local Government
20 February 2019

PART 1

1. Description

1.1 Sections 39 to 41 of the Wales Act 2017 (“the 2017 Act”) among other things, devolve to the Welsh Ministers:

- responsibility for the consenting of offshore generating stations in Welsh waters with a capacity up to and including 350MW; and
- other associated functions such as the ability to extinguish public rights of navigation and provision relating to safety zones around renewable energy installations.

These provisions will be fully commenced on 1 April 2019.

1.2 As a result of amendments to the Electricity Act 1989 (“the 1989 Act”) and the Planning Act 2008 (“the 2008 Act”) made by the 2017 Act the Welsh Ministers are the appropriate (consenting) authority in relation to applications made after 1 April 2019 under sections 36 and 36C of the 1989 Act relating to generating stations (or proposed generating stations) in Welsh waters (as defined in section 36 of the 1989 Act) which have or will have a capacity not exceeding 350MW.

1.3 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 make provision about the grant of consents under section 36 of the 1989 Act (“ a section 36 consent”) in relation to generating stations in respect of which the Welsh Ministers are the appropriate authority. These Regulations include provision about the making of applications, service and publicity requirements, the circumstances in which public inquiries are to be held and the scope of public inquiries where there is more one or more relevant planning authority. They also make consequential amendments to the Conservation of Habitats and Species Regulations 2017.

1.4 The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 make provision about applications to vary a section 36 consent under section 36C of the 1989 Act where the Welsh Ministers are the appropriate authority. These Regulations include provision about what must be included in or accompany a variation application, notification and publicity requirements, when public inquiries are to be held and the withdrawal of variation application. They also revoke the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 in so far as they apply to an application to the Welsh Ministers under section 36C of the 1989 Act.

1.5 The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 make provision about inquiries caused to be held by the Welsh Ministers in relation to applications under sections 36 and 36C of the 1989 Act.

1.6 The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019 amend the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 to provide the Welsh Ministers are the 'relevant authority' where an application under section 36 or 36C of the 1989 Act is made (or to be made) to the Welsh Ministers. They also amend the meaning of consultation body and insert reference to the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 in two regulations.

1.7 The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019 make minor amendments to the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 to reflect the change in responsibilities from the Secretary of State to the Welsh Ministers for declaring safety zones in Welsh waters.

2. Matters of special interest to the Constitutional and legislative Affairs Committee

2.1 There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative Background

Electricity Act 1989 SIs

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019

3.1 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 36(8A) (which is inserted into section 36 by paragraph 47 of Schedule 6 to the 2017 Act) and 60 of the 1989 Act.

3.2 Section 36(8A) gives the Welsh Ministers power to make provision about the grant of consents under section 36 of the 1989 Act in relation to generating stations in respect of which they are the appropriate authority.

3.3 Section 60 of the 1989 Act contains supplemental powers in relation to regulations made under Part 1 of the 1989 Act, regulations made under section 36(8A) of the 1989 Act are made under Part 1 of that Act.

3.4 These Regulations are made using the negative resolution procedure.

The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019

3.5 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by section 36C(2) and (6) (as amended by section 39(12) of the 2017 Act) and 60 of the 1989 Act.

3.6 Section 36C(2) and (6) give the Welsh Ministers power to make provision about the variation of a consent under Section 36 of the 1989 Act relating to generating stations (or proposed generating stations) in Welsh waters that do not or will not when constructed or extended exceed 350MW.

3.7 As mentioned at paragraph 3.3 above section 60 of the 1989 Act contains supplemental powers in relation to regulations made under Part 1 of the 1989 Act, regulations made under section 36C of the 1989 Act are regulations made under Part 1 of that Act.

3.8 These Regulations are made using the negative resolution procedure.

The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019

3.9 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 36(8A), 36C(2) and(6) and 60 of the 1989 Act. These provisions are described at paragraphs 3.1 to 3.8 above.

3.10 These Regulations are made using the negative resolution procedure.

The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019

3.11 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 36(8A), 36C(2) and (6) and 60 of the 1989 Act. These provisions are described at paragraphs 3.1 to 3.8 above.

3.12 These Regulations are made using the negative resolution procedure.

<u>Energy Act 2004 SI</u>

The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019

3.13 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 96 and 192 of, and paragraph 4(1) of Schedule 16 to, the Energy Act 2004 ("the 2004 Act").

3.14 Section 41 of the 2017 Act amends sections 95, 96 and 104 of the Energy Act 2004 to enable the Welsh Ministers to exercise functions in relation to declaring safety zones around offshore renewable energy installations with a capacity of up to 350MW in Welsh waters.

3.15 Sections 95-98 of, and Schedule 16 to, the 2004 Act make provision for safety zones applying to offshore renewable energy installations. The essence of a safety zone is it is a criminal offence for vessels to enter or remain in a safety zone unless permitted to do so by means of a safety zone notice issued by the appropriate Minister (in Welsh waters, the Welsh Ministers).

3.16 Section 96 prohibits vessels from entering or remaining in a safety zone and carrying out activities except where permitted to do so by a notice declaring a safety zone. Section 41 of the Wales Act 2017 amends section 96 so that the Welsh Ministers can make regulations setting out general permissions allowing vessels to enter any safety zone and carry out activities. This is in addition to any individual permissions granted in the notice declaring that safety zone.

3.17 Section 192 sets out supplemental powers in relation to regulations made under the Energy Act 2004.

3.18 Schedule 16 to the Energy Act 2004 sets out the process for applying for a safety zone notice under section 95. Paragraph 4(1) of Schedule 16, among other things, enables the Welsh Ministers to prescribe the circumstances where notice should be be served on persons specified either in regulations or in in directions.

3.19 These Regulations are made using the negative resolution procedure.

4. Purpose and Effect

4.1 The Wales Act 2017 (Commencement No.4) Regulations 2017 fully commences the relevant sections of the 2017 Act, in relation to the consenting of generating stations in Welsh waters up to and including 350MW, on 1 April 2019.

4.2 Section 36 of the 1989 Act has historically been the relevant consenting route for offshore generating stations in Welsh waters between 1MW and 100MW, albeit decisions are made by the Marine Management Organisation on behalf of the Secretary of State prior to 1 April 2019. For offshore generating stations of between 100MW and 350MW, developers have been required to obtain a Development Consent Order under the 2008 Act. The 2017 Act makes amendments to the 1989 Act and the 2008 Act which apply the section 36 consent process under the 1989 Act to offshore generating stations in Welsh waters (as defined in section 36 of the 1989 Act) which have or will have a capacity not exceeding 350MW. The Welsh Ministers will be the appropriate consenting authority for such consents.

4.3 The procedure for determining applications for a section 36 consent is currently set out at Schedule 8 of the 1989 Act, along with accompanying regulations. As a consequence of the 2017 Act, Schedule 8 will not apply to applications made to the Welsh Ministers. The purpose of the following SIs made under the 1989 Act is to provide a procedure for applications for section 36 consents and variation of section 36 consents. For continuity and to provide a known operable process, it is intended to restate with minor amendments the existing procedures for such applications.

Electricity Act 1989 SIs

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019

4.4 Schedule 8 of the 1989 Act (amongst other matters) sets out the procedure for applications for section 36 consents. This is supplemented by the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006. As a consequence of paragraph 8(1A) of Schedule 8 to the 1989 Act (as inserted by the Wales Act 2017), Schedule 8 will not apply to applications to the Welsh Ministers. The 2006 Regulations were made under powers in Schedule 8. Therefore, the procedures in Schedule 8 and the 2006 Regulations will not apply to applications for a section 36 consent made to the Welsh Ministers.

4.5 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 make provision about the grant of section 36 consents Act to construct, extend or operate an offshore generating station. They make equivalent provision to relevant provisions in Schedule 8 to the 1989 Act and the 2006 Regulations with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority.

4.6 The purpose of these Regulations is purely for operability and will not introduce new policy or changes to the existing procedure followed in relation to applications under section 36 of the 1989 Act. This approach provides continuity for those developments between 1MW and 100MW which would be dealt with under the 1989 Act. Some minor changes are required to reflect the consenting role being undertaken by the Welsh Ministers and to reflect the existence of different consultation bodies in Wales.

The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019

4.7 The Electricity (Offshore Generating Stations) (Variation of Consents) (England and Wales) Regulations 2013 ("the 2013 Regulations") set out the procedure for applications to vary a section 36 consent under section 36C of the 1989 Act. Prior to amendments made to sections 36 and 36C of the 1989 Act by the 2017 Act all applications under section 36C were made to the Marine Management Organisation or the Secretary of State.

4.8 The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 make provision about applications to the Welsh Ministers under section 36C of the 1989 Act where the Welsh Ministers are the appropriate (consenting) authority. They make equivalent provision to the 2013 Regulations with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority. The Regulations will not introduce new policy or changes to the existing procedure followed in relation to applications under section 36C of the 1989 Act.

The Electricity (Offshore Generating Stations (Inquiries Procedure) (Wales) Regulations 2019

4.9 The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 ("the 2007 Rules") set out the procedure where an inquiry is caused to held by the Secretary of State into an application under sections 36 of the 1989 Act. The 2007 Rules are applied (with modifications) to an inquiry into a section 36C application by the 2013 Regulations.

4.10 The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 set out the procedure to be followed where the Welsh Ministers cause an inquiry to be held into an application under section 36 or 36C of the 1989 Act. They make equivalent provision to that found in the 2007 Rules with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority.

The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019

4.11 The effect of these Regulations is to amend the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 to provide the Welsh Ministers are the 'relevant authority' where an application under section 36 or 36C of the 1989 Act is made (or to be made) to the Welsh Ministers. A number of minor amendments are also made. The amendments have been made a result of the amendments to section 36 and 36C of the 1989 Act by the 2017 Act to reflect the Welsh Ministers new consenting role under those provisions.

Energy Act 2004 SI

The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019

4.12 The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 ("the 2007 Regulations") set out procedural requirements in respect of a safety zone application, as well as prescribing categories of vessels and activities permitted in safety zones.

4.13 The purpose of these Regulations is to make amendments to the 2007 Regulations for operability and to reflect the change in responsibilities where the Welsh Ministers are the appropriate Minister.

4.14 The effect of the Regulations is to provide that the Welsh Ministers do not need to be notified of a safety zone application in Welsh waters where they are the appropriate Minister, and they set out additional vessels permitted in safety zones where they are the appropriate Minister.

5. Consultation

5.1 A 12 week consultation ran from 30 April to 23 July 2018 on changes to the consenting of infrastructure in Wales. The consultation was drawn to the attention of a wide range of stakeholders including LPAs, generating station operators and their representatives, businesses, planning consultants, interest groups and other public sector agencies. A total of 47 responses were received.

5.2 Question 4 related to proposed arrangements for offshore generating stations. A number of respondents, while agreeing with the logic of the approach in the short-term, commented the long term vision must be to unify consenting

regimes on and offshore. A number of respondents commented the interaction between the consent under the Electricity Act 1989 and the associated marine licence must be reviewed by the Welsh Government, to ensure a good level of service, concurrent decision and to reduce duplication of workload. In response, it is intended to continue to work with Natural Resources Wales to establish appropriate working arrangements.

5.3 A summary of the consultation responses is available at:

https://beta.gov.wales/changes-approval-infrastructure-development .

6. Regulatory Impact Assessment

6.1 The requirement for a Regulatory Impact Assessment ("RIA") has been assessed against the RIA code for subordinate legislation. In this instance, an RIA was not considered necessary.

6.2 These statutory instruments are made as a consequence of sections 39 to 41 of the 2017 Act insofar as they affect the devolution of the consenting of offshore generating stations. These sections will be fully commenced on 1 April 2019.

6.3 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019, the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 and the Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 make equivalent provision to relevant provisions of the Schedule 8 to the 1989 Act, the 2006 Regulations, the 2013 Regulations and the 2007 Rules with minor amendments to reflect the Welsh Ministers consenting role. The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019 and the Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019 make minor amendments to the procedure in relation safety zones under section 95 of the Energy Act 2004 and to the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017.

6.4 Accordingly, as these statutory instruments comprise routine technical and consequential amendments to the existing procedures under the 1989 Act and the Energy Act 2004 which have no policy impact, no RIA is required.

6.5 The 2017 Act, which made amendments to the 1989 Act, the 2004 Act and 2008 Act, however, was accompanied by an RIA which assessed the costs

and benefits of the devolution of energy consenting functions under the 1989 Act and the 2004 Act.

6.6 The RIA which accompanied the 2017 Act during its passage is available at:

https://webarchive.nationalarchives.gov.uk/20160611073307/https:/www.gov.uk/government/uploads/system/uploads/attachment_data/file/527740/Wales_Bill_impact_assessment.pdf .

SL(5)345 – The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019

Background and Purpose

These Regulations make provision about the grant of consents under section 36 of the Electricity Act 1989 (the "1989 Act") to construct, extend or operate an offshore generating station in respect of which the Welsh Ministers are the appropriate authority.

For the purposes of these Regulations, a reference to an application for consent under section 36 of the 1989 Act includes any application made under section 36A for a declaration relating to public rights of navigation which is made with an application for consent under section 36 of the 1989 Act.

The Welsh Ministers are the appropriate authority in relation to applications made after 1 April 2019 under section 36 of the 1989 Act, relating to generations stations (or proposed generating stations) in Welsh waters which have or will have a capacity not exceeding 350 megawatts.

These Regulations make provision about:

- the making of applications;
- service and publicity requirements;
- the circumstances in which public inquiries are to be held; and
- the scope of public inquiries where there are one or more relevant planning authorities.

These Regulations also make provision for the circumstances in which a notice required by these Regulations may be combined with a notice required by or under Schedule 16 to the Energy Act 2004.

Additionally, these Regulations make a consequential amendment to the Conservation of Habitats and Species Regulations 2017.

Procedure

Negative.

Technical Scrutiny

One point are identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation

Regulation 7(1)(b) notes that a notice of application must be published "…in one or more national newspapers". However, the Regulations does not specify whether "national" refers to a Welsh national newspaper or a UK newspaper.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3(ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

Regulation 5 provides that, where an applicant (regulation 5(2)), or the Welsh Ministers (regulation 5(4)) consider that a local planning authority in England and Wales or the Department of the Environment in Northern Ireland is likely to have an interest in the application, the applicant must serve notice of an application of that body (regulation 5(2)) or the Welsh Ministers may direct the applicant to do so (regulation 5(4)). These provisions do not include references to appropriate corresponding bodies in Scotland or the Isle of Man. We understand that the reason for not including Scotland in these provisions is due to the distance between Welsh waters and Scotland. However, the reasoning as to why the Isle of Man has not been included within these provisions is unclear.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
14 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 295 (W. 73)

ELECTRICITY, WALES

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the grant of consents under section 36 of the Electricity Act 1989 ("the 1989 Act") to construct, extend or operate an offshore generating station in respect of which the Welsh Ministers are the appropriate authority.

For the purposes of these Regulations a reference to an application for consent under section 36 of the 1989 Act includes any application under section 36A of that Act for a declaration relating to public rights of navigation which is made with an application for consent under section 36 of the 1989 Act.

The Welsh Ministers are the appropriate authority in relation to applications made after 1 April 2019 under section 36 of the 1989 Act relating to generating stations (or proposed generating stations) in Welsh waters which have or will have a capacity not exceeding 350 megawatts.

"Welsh waters" means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales, and the Welsh zone. "Welsh Zone" has the meaning given in section 158 of the Government of Wales Act 2006.

These Regulations make provision about—

(a) the making of applications;

(b) service and publicity requirements;

(c) the circumstances in which public inquiries are to be held; and

(d) the scope of public inquiries where there are one or more relevant planning authorities.

These Regulations also make provision for the circumstances in which a notice required by these Regulations may be combined with a notice required by or under Schedule 16 to the Energy Act 2004.

They also make a consequential amendment to the Conservation of Habitats and Species Regulations 2017.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2019 No. 295 (W. 73)

ELECTRICITY, WALES

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019

Made *18 February 2019*

Laid before the National Assembly for Wales *20 February 2019*

Coming into force *1 April 2019*

The Welsh Ministers, in exercise of the powers conferred on them by sections 36(8A) and 60 of the Electricity Act 1989(**1**), make the following Regulations:

Title and commencement

1. The title of these Regulations is the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 and they come into force on 1 April 2019.

Interpretation

2.—(1) In these Regulations—

"the 1990 Act" ("*Deddf 1990*") means the Town and Country Planning Act 1990(**2**);

(**1**) 1989 c. 29. Subsection (8A) was inserted into section 36 by paragraph 47 of Schedule 6 to the Wales Act 2017 (c. 4) ("the 2017 Act"). Amendments to section 60 are not relevant to these Regulations.
(**2**) 1990 c. 8.

"application" ("*cais*") means an application to the Welsh Ministers for consent under section 36(**1**) to construct, extend or operate a generating station(**2**), together with any application under section 36A(**3**) for a declaration relating to rights of navigation which is made with the application under section 36;

"local planning authority" ("*awdurdod cynllunio lleol*") has the same meaning as in Part 1 of the 1990 Act;

"relevant planning authority" ("*awdurdod cynllunio perthnasol*") means in relation to land in Wales, a local planning authority;

"section 90 development" ("*datblygiad adran 90*") means any development in respect of which an applicant on making an application requests the Welsh Ministers to give a direction under section 90(2) or (2ZA) of the 1990 Act(**4**) (deemed planning permission for development with government authorisation).

(2) Unless otherwise stated, any reference in these Regulations to a numbered section is a reference to that section of the Electricity Act 1989.

Content of applications

3. An application must be in writing and must describe by reference to a map the place to which the application relates, that is, the place where—

(a) it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated; and

(b) any section 90 development will be situated.

Service of notice of application on the relevant planning authority

4. Where an application is made to the Welsh Ministers and a part of the place to which the application relates is within the area of a relevant

(**1**) Section 36 was amended by section 93 of the Energy Act 2004 (c. 20) ("the 2004 Act"), paragraphs 31 and 32 of Schedule 2 to the Planning Act 2008 (c. 29), section 12(7) and (8) of the Marine and Coastal Access Act 2009 (c. 23) ("the 2009 Act"), section 78 of the Energy Act 2016 (c. 20) and section 39(7) to (11) of, and paragraph 47 of Schedule 6 to, the 2017 Act. Other amendments are not relevant to these Regulations.

(**2**) *See* section 64(1) of the Electricity Act 1989 ("the 1989 Act") for the interpretation of "generating station".

(**3**) Section 36A was inserted into the 1989 Act by section 99(1) of the 2004 Act and was amended by section 12(7) and (8) of the 2009 Act and section 40(1) to (5) of the 2017 Act.

(**4**) Section 90(2) and (2ZA) were substituted by section 21(2) of the Growth and Infrastructure Act 2013 (c. 27) and were amended by section 39(13) of the 2017 Act.

planning authority, notice of the application must be served on the relevant planning authority.

Service of notice of application where there is no relevant planning authority

5.—(1) This regulation applies where no part of the place to which an application relates is within the area of a relevant planning authority.

(2) Where in the applicant's opinion any local planning authority in England and Wales or the Department of the Environment in Northern Ireland is likely to have an interest in the application, the applicant must serve notice of the application upon that body and, within seven days of such service, inform the Welsh Ministers in writing of its identity and provide them with a copy of the notice.

(3) Where, in the applicant's opinion, no such body as is mentioned in paragraph (2) is likely to have an interest in the application, the applicant must inform the Welsh Ministers of that fact.

(4) Where in the Welsh Ministers' opinion any local planning authority in England and Wales or the Department of the Environment in Northern Ireland is likely to have an interest in the application, the Welsh Ministers may, unless they have received a notice under paragraph (2) to the effect that a notice of the application has been served on that body, direct that the applicant must serve notice of an application upon that body.

Service of notice of application on other persons

6.—(1) The applicant must serve notice of an application upon—

(a) the Joint Nature Conservation Committee(**1**);

(b) the Natural Resources Body for Wales(**2**);

(c) the Maritime and Coastguard Agency;

(d) a harbour authority, in the case of development in or adjacent to a harbour under the control of that authority;

(e) such other persons as the Welsh Ministers may direct.

(2) In this regulation, "harbour" ("*harbwr*") and "harbour authority" ("*awdurdod harbwr*") have the

(**1**) The Joint Nature Conservation Committee was re-constituted in accordance with Schedule 4 of the Natural Environment and Rural Communities Act 2006 (c. 16): *see* section 31(b) of that Act.

(**2**) The Natural Resources Body for Wales was established by article 3 of S.I. 2012/1903 (W. 230).

same meaning as in section 57 of the Harbours Act 1964(**1**) (interpretation).

Publication of notice of application

7.—(1) The applicant must publish notice of an application—

(a) in two successive weeks in one or more local newspapers which are likely to come to the attention of those likely to be affected by the proposed development;

(b) in Lloyd's List and in one or more national newspapers;

(c) if there are in circulation one or more appropriate fishing trade journals which are published at intervals not exceeding one month, in at least one such trade journal; and

(d) in the London Gazette.

(2) The notice must describe, by reference to a map, the place to which the application relates, and must provide that the map may be inspected, during normal office hours, by members of the public either—

(a) at the offices—

(i) of any relevant planning authority upon whom the applicant serves notice of the application under regulation 4; or

(ii) of each local planning authority in Wales upon whom the applicant serves notice of the application under regulation 5(2) or pursuant to a direction of the Welsh Ministers under regulation 5(4); or

(b) at an address which is reasonably accessible to those likely to be affected by the consent applied for if it is granted.

(3) Paragraphs (1) and (2) do not apply to an application for an extension or change in the manner of operation where the Welsh Ministers—

(a) consider the extension or change to be of a minor character; and

(b) give a direction dispensing with the requirements of those paragraphs.

Objections by recipients of notice of application

8.—(1) Any notice served or published pursuant to regulations 5, 6 or 7(1) must state the time (which must not be less than 28 days from the date of service of the notice, or less than 28 days from the date or latest date of publication of the notice) within which,

(**1**) 1964 c. 40. Section 57 was amended by paragraph 33(a) of Schedule 13 to the Merchant Shipping Act 1995 (c. 21). Other amendments to section 57 are not relevant to these Regulations.

and the manner in which, objections to the application may be made to the Welsh Ministers, by persons other than any relevant planning authority.

(2) A relevant planning authority must serve notification of any objection by it to an application upon the Welsh Ministers within four months of the date of the application, or within any longer period as may be agreed in writing by the authority with both the Welsh Ministers and the applicant.

Public inquiries where there are objections by the relevant planning authority

9.—(1) Where the relevant planning authority notify the Welsh Ministers that they object to the application and their objection is not withdrawn, the Welsh Ministers—

(a) must cause a public inquiry to be held;

(b) before determining whether to give their consent, must consider the objection and the report of the person who held the inquiry.

(2) Paragraph (1) does not apply where the Welsh Ministers propose to accede to the application subject to such modifications or conditions as will give effect to the objection of the relevant planning authority

(3) The Welsh Ministers may, for the purposes of paragraph (1), disregard any objection not notified by a relevant planning authority in accordance with regulation 8(2).

Public inquiries where there are objections by other persons

10.—(1) This regulation applies where—

(a) the Welsh Ministers are not required by virtue of regulation 9(1) to cause a public inquiry to be held; but

(b) objections or copies of objections have been sent to the Welsh Ministers in accordance with these Regulations.

(2) The Welsh Ministers must—

(a) consider objections or copies of objections sent to them in accordance with these Regulations, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application; and

(b) cause a public inquiry to be held if they think it appropriate to do so, either in addition to or instead of any other hearing or opportunity of stating objections to the application.

Scope of public inquiries where there are one or more relevant planning authorities

11.—(1) This regulation applies where—

(a) a public inquiry is to be held in accordance with regulation 9(1) or 10; and

(b) the application relates to a place a part of which is in the area of one or more relevant planning authorities.

(2) Except in so far as the Welsh Ministers otherwise direct, an inquiry held under regulation 9(1) must be confined to so much of the application as relates to land within the area of the authority by whom an objection has been made.

(3) The Welsh Ministers must have regard to objections made otherwise than by the authority in question in determining whether to give a direction under paragraph (2) and in determining (where they give one) what direction to give.

(4) The Welsh Ministers may direct that separate inquiries may be held in relation to any or each of the following—

(a) so much of the application as relates to land within the area of a particular relevant planning authority;

(b) so much of the application as relates to anywhere that is not within the area of a relevant planning authority.

(5) For the purposes of paragraph (2) a planning authority that has made an objection is to be treated as not having done so if the Welsh Ministers propose to accede to the application subject to such modifications or conditions as meet that objection.

Combined notice

12. A notice required by these Regulations may be combined with a notice required by or under Schedule 16 to the Energy Act 2004(**1**) (applications and proposals for notices under section 95) in any case involving the same generating station.

Consequential amendment

13.—(1) Regulation 90(3) of the Conservation of Habitats and Species Regulations 2017(**2**) (consents under Electricity Act 1989: procedure on review) is amended as follows.

(2) Before sub-paragraph (a) insert—

(**1**) 2004 c. 20. Schedule 16 was amended by section 62(1), (17), (18) and (19) of the Scotland Act 2016 (c. 11) and paragraph 61 of Schedule 6 to the 2017 Act. Other amendments are not relevant to these Regulations.

(**2**) S.I. 2017/1012.

"(za) in a case where the Welsh Ministers are the competent authority, the relevant planning authority within the meaning of regulation 2(1) of the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 (interpretation),".

(3) At the beginning of sub-paragraph (a) insert "in any other case,".

Julie James
Minister for Housing and Local Government, one of the Welsh Ministers
18 February 2019

Explanatory Memorandum to:

1) **The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019.**
2) **The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019.**
3) **The Electricity (Offshore Generating Stations (Inquiries Procedure) (Wales) Regulations 2019.**
4) **The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019.**
5) **The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019.**

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the:

1) The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019;
2) The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019;
3) The Electricity (Offshore Generating Stations (Inquiries Procedure) (Wales) Regulations 2019;
4) The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019; and
5) The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019.

Julie James
Minister for Housing and Local Government
20 February 2019

PART 1

1. Description

1.1 Sections 39 to 41 of the Wales Act 2017 (“the 2017 Act”) among other things, devolve to the Welsh Ministers:

- responsibility for the consenting of offshore generating stations in Welsh waters with a capacity up to and including 350MW; and
- other associated functions such as the ability to extinguish public rights of navigation and provision relating to safety zones around renewable energy installations.

These provisions will be fully commenced on 1 April 2019.

1.2 As a result of amendments to the Electricity Act 1989 (“the 1989 Act”) and the Planning Act 2008 (“the 2008 Act”) made by the 2017 Act the Welsh Ministers are the appropriate (consenting) authority in relation to applications made after 1 April 2019 under sections 36 and 36C of the 1989 Act relating to generating stations (or proposed generating stations) in Welsh waters (as defined in section 36 of the 1989 Act) which have or will have a capacity not exceeding 350MW.

1.3 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 make provision about the grant of consents under section 36 of the 1989 Act (“ a section 36 consent”) in relation to generating stations in respect of which the Welsh Ministers are the appropriate authority. These Regulations include provision about the making of applications, service and publicity requirements, the circumstances in which public inquiries are to be held and the scope of public inquiries where there is more one or more relevant planning authority. They also make consequential amendments to the Conservation of Habitats and Species Regulations 2017.

1.4 The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 make provision about applications to vary a section 36 consent under section 36C of the 1989 Act where the Welsh Ministers are the appropriate authority. These Regulations include provision about what must be included in or accompany a variation application, notification and publicity requirements, when public inquiries are to be held and the withdrawal of variation application. They also revoke the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 in so far as they apply to an application to the Welsh Ministers under section 36C of the 1989 Act.

1.5 The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 make provision about inquiries caused to be held by the Welsh Ministers in relation to applications under sections 36 and 36C of the 1989 Act.

1.6 The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019 amend the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 to provide the Welsh Ministers are the 'relevant authority' where an application under section 36 or 36C of the 1989 Act is made (or to be made) to the Welsh Ministers. They also amend the meaning of consultation body and insert reference to the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 in two regulations.

1.7 The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019 make minor amendments to the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 to reflect the change in responsibilities from the Secretary of State to the Welsh Ministers for declaring safety zones in Welsh waters.

2. Matters of special interest to the Constitutional and legislative Affairs Committee

2.1 There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative Background

Electricity Act 1989 SIs

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019

3.1 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 36(8A) (which is inserted into section 36 by paragraph 47 of Schedule 6 to the 2017 Act) and 60 of the 1989 Act.

3.2 Section 36(8A) gives the Welsh Ministers power to make provision about the grant of consents under section 36 of the 1989 Act in relation to generating stations in respect of which they are the appropriate authority.

3.3 Section 60 of the 1989 Act contains supplemental powers in relation to regulations made under Part 1 of the 1989 Act, regulations made under section 36(8A) of the 1989 Act are made under Part 1 of that Act.

3.4 These Regulations are made using the negative resolution procedure.

The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019

3.5 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by section 36C(2) and (6) (as amended by section 39(12) of the 2017 Act) and 60 of the 1989 Act.

3.6 Section 36C(2) and (6) give the Welsh Ministers power to make provision about the variation of a consent under Section 36 of the 1989 Act relating to generating stations (or proposed generating stations) in Welsh waters that do not or will not when constructed or extended exceed 350MW.

3.7 As mentioned at paragraph 3.3 above section 60 of the 1989 Act contains supplemental powers in relation to regulations made under Part 1 of the 1989 Act, regulations made under section 36C of the 1989 Act are regulations made under Part 1 of that Act.

3.8 These Regulations are made using the negative resolution procedure.

The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019

3.9 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 36(8A), 36C(2) and(6) and 60 of the 1989 Act. These provisions are described at paragraphs 3.1 to 3.8 above.

3.10 These Regulations are made using the negative resolution procedure.

The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019

3.11 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 36(8A), 36C(2) and (6) and 60 of the 1989 Act. These provisions are described at paragraphs 3.1 to 3.8 above.

3.12 These Regulations are made using the negative resolution procedure.

Energy Act 2004 SI

The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019

3.13 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 96 and 192 of, and paragraph 4(1) of Schedule 16 to, the Energy Act 2004 ("the 2004 Act").

3.14 Section 41 of the 2017 Act amends sections 95, 96 and 104 of the Energy Act 2004 to enable the Welsh Ministers to exercise functions in relation to declaring safety zones around offshore renewable energy installations with a capacity of up to 350MW in Welsh waters.

3.15 Sections 95-98 of, and Schedule 16 to, the 2004 Act make provision for safety zones applying to offshore renewable energy installations. The essence of a safety zone is it is a criminal offence for vessels to enter or remain in a safety zone unless permitted to do so by means of a safety zone notice issued by the appropriate Minister (in Welsh waters, the Welsh Ministers).

3.16 Section 96 prohibits vessels from entering or remaining in a safety zone and carrying out activities except where permitted to do so by a notice declaring a safety zone. Section 41 of the Wales Act 2017 amends section 96 so that the Welsh Ministers can make regulations setting out general permissions allowing vessels to enter any safety zone and carry out activities. This is in addition to any individual permissions granted in the notice declaring that safety zone.

3.17 Section 192 sets out supplemental powers in relation to regulations made under the Energy Act 2004.

3.18 Schedule 16 to the Energy Act 2004 sets out the process for applying for a safety zone notice under section 95. Paragraph 4(1) of Schedule 16, among other things, enables the Welsh Ministers to prescribe the circumstances where notice should be be served on persons specified either in regulations or in in directions.

3.19 These Regulations are made using the negative resolution procedure.

4. Purpose and Effect

4.1 The Wales Act 2017 (Commencement No.4) Regulations 2017 fully commences the relevant sections of the 2017 Act, in relation to the consenting of generating stations in Welsh waters up to and including 350MW, on 1 April 2019.

4.2 Section 36 of the 1989 Act has historically been the relevant consenting route for offshore generating stations in Welsh waters between 1MW and 100MW, albeit decisions are made by the Marine Management Organisation on behalf of the Secretary of State prior to 1 April 2019. For offshore generating stations of between 100MW and 350MW, developers have been required to obtain a Development Consent Order under the 2008 Act. The 2017 Act makes amendments to the 1989 Act and the 2008 Act which apply the section 36 consent process under the 1989 Act to offshore generating stations in Welsh waters (as defined in section 36 of the 1989 Act) which have or will have a capacity not exceeding 350MW. The Welsh Ministers will be the appropriate consenting authority for such consents.

4.3 The procedure for determining applications for a section 36 consent is currently set out at Schedule 8 of the 1989 Act, along with accompanying regulations. As a consequence of the 2017 Act, Schedule 8 will not apply to applications made to the Welsh Ministers. The purpose of the following SIs made under the 1989 Act is to provide a procedure for applications for section 36 consents and variation of section 36 consents. For continuity and to provide a known operable process, it is intended to restate with minor amendments the existing procedures for such applications.

Electricity Act 1989 SIs

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019

4.4 Schedule 8 of the 1989 Act (amongst other matters) sets out the procedure for applications for section 36 consents. This is supplemented by the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006. As a consequence of paragraph 8(1A) of Schedule 8 to the 1989 Act (as inserted by the Wales Act 2017), Schedule 8 will not apply to applications to the Welsh Ministers. The 2006 Regulations were made under powers in Schedule 8. Therefore, the procedures in Schedule 8 and the 2006 Regulations will not apply to applications for a section 36 consent made to the Welsh Ministers.

4.5 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 make provision about the grant of section 36 consents Act to construct, extend or operate an offshore generating station. They make equivalent provision to relevant provisions in Schedule 8 to the 1989 Act and the 2006 Regulations with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority.

4.6 The purpose of these Regulations is purely for operability and will not introduce new policy or changes to the existing procedure followed in relation to applications under section 36 of the 1989 Act. This approach provides continuity for those developments between 1MW and 100MW which would be dealt with under the 1989 Act. Some minor changes are required to reflect the consenting role being undertaken by the Welsh Ministers and to reflect the existence of different consultation bodies in Wales.

The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019

4.7 The Electricity (Offshore Generating Stations) (Variation of Consents) (England and Wales) Regulations 2013 ("the 2013 Regulations") set out the procedure for applications to vary a section 36 consent under section 36C of the 1989 Act. Prior to amendments made to sections 36 and 36C of the 1989 Act by the 2017 Act all applications under section 36C were made to the Marine Management Organisation or the Secretary of State.

4.8 The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 make provision about applications to the Welsh Ministers under section 36C of the 1989 Act where the Welsh Ministers are the appropriate (consenting) authority. They make equivalent provision to the 2013 Regulations with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority. The Regulations will not introduce new policy or changes to the existing procedure followed in relation to applications under section 36C of the 1989 Act.

The Electricity (Offshore Generating Stations (Inquiries Procedure) (Wales) Regulations 2019

4.9 The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 ("the 2007 Rules") set out the procedure where an inquiry is caused to held by the Secretary of State into an application under sections 36 of the 1989 Act. The 2007 Rules are applied (with modifications) to an inquiry into a section 36C application by the 2013 Regulations.

4.10 The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 set out the procedure to be followed where the Welsh Ministers cause an inquiry to be held into an application under section 36 or 36C of the 1989 Act. They make equivalent provision to that found in the 2007 Rules with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority.

The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019

4.11 The effect of these Regulations is to amend the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 to provide the Welsh Ministers are the 'relevant authority' where an application under section 36 or 36C of the 1989 Act is made (or to be made) to the Welsh Ministers. A number of minor amendments are also made. The amendments have been made a result of the amendments to section 36 and 36C of the 1989 Act by the 2017 Act to reflect the Welsh Ministers new consenting role under those provisions.

Energy Act 2004 SI

The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019

4.12 The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 ("the 2007 Regulations") set out procedural requirements in respect of a safety zone application, as well as prescribing categories of vessels and activities permitted in safety zones.

4.13 The purpose of these Regulations is to make amendments to the 2007 Regulations for operability and to reflect the change in responsibilities where the Welsh Ministers are the appropriate Minister.

4.14 The effect of the Regulations is to provide that the Welsh Ministers do not need to be notified of a safety zone application in Welsh waters where they are the appropriate Minister, and they set out additional vessels permitted in safety zones where they are the appropriate Minister.

5. Consultation

5.1 A 12 week consultation ran from 30 April to 23 July 2018 on changes to the consenting of infrastructure in Wales. The consultation was drawn to the attention of a wide range of stakeholders including LPAs, generating station operators and their representatives, businesses, planning consultants, interest groups and other public sector agencies. A total of 47 responses were received.

5.2 Question 4 related to proposed arrangements for offshore generating stations. A number of respondents, while agreeing with the logic of the approach in the short-term, commented the long term vision must be to unify consenting

regimes on and offshore. A number of respondents commented the interaction between the consent under the Electricity Act 1989 and the associated marine licence must be reviewed by the Welsh Government, to ensure a good level of service, concurrent decision and to reduce duplication of workload. In response, it is intended to continue to work with Natural Resources Wales to establish appropriate working arrangements.

5.3 A summary of the consultation responses is available at:

https://beta.gov.wales/changes-approval-infrastructure-development .

6. Regulatory Impact Assessment

6.1 The requirement for a Regulatory Impact Assessment ("RIA") has been assessed against the RIA code for subordinate legislation. In this instance, an RIA was not considered necessary.

6.2 These statutory instruments are made as a consequence of sections 39 to 41 of the 2017 Act insofar as they affect the devolution of the consenting of offshore generating stations. These sections will be fully commenced on 1 April 2019.

6.3 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019, the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 and the Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 make equivalent provision to relevant provisions of the Schedule 8 to the 1989 Act, the 2006 Regulations, the 2013 Regulations and the 2007 Rules with minor amendments to reflect the Welsh Ministers consenting role. The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) (Amendment) (Wales) Regulations 2019 and the Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019 make minor amendments to the procedure in relation safety zones under section 95 of the Energy Act 2004 and to the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017.

6.4 Accordingly, as these statutory instruments comprise routine technical and consequential amendments to the existing procedures under the 1989 Act and the Energy Act 2004 which have no policy impact, no RIA is required.

6.5 The 2017 Act, which made amendments to the 1989 Act, the 2004 Act and 2008 Act, however, was accompanied by an RIA which assessed the costs

and benefits of the devolution of energy consenting functions under the 1989 Act and the 2004 Act.

6.6 The RIA which accompanied the 2017 Act during its passage is available at:

https://webarchive.nationalarchives.gov.uk/20160611073307/https:/www.gov.uk/government/uploads/system/uploads/attachment_data/file/527740/Wales_Bill_impact_assessment.pdf .

Agenda Item 4.4

SL(5)348 – The Developments of National Significance (Wales) (Amendment) Regs 2019

Background and Purpose

These Regulations amend the Developments of National Significance (Wales) Regulations 2016 (the "2016 Regulations"), in relation to the determination of applications for planning permission for the installation of overhead electric lines.

The installation of overhead lines with a nominal voltage of 132KV or less and which are associated with devolved Welsh generating station constitutes development of national significance ("DNS"), by virtue of the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 (S.I. 2016/53, W.23) (the "2016 Regulations"), as amended.

Paragraph 1 of Schedule 4D to the Town and Country Planning Act 1990 allows specified functions of the Welsh Ministers, in relation to DNS, to be undertaken by an appointed person.

Regulation 2(3) inserts a new regulation 11A into the 2016 Regulations, to prescribe specified functions in respect of overhead electric lines.

Regulation 2(5) inserts a new regulation 18A, which makes provision for a report by the appointed person after an application is considered on the basis of written representations. This new regulation also allows a hearing or inquiry to be held if the appointed person has considered new evidence or matters of fact.

Regulation 2(6) inserts a new regulation 28A, which makes provision for applications considered by way of a hearing, and also applies to applications dealt with by way of an inquiry.

These Regulations also make further consequential amendments to the 2016 Regulations.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

Regulation 2(13)(b) of the Regulations inserts a new paragraph 8A into Schedule 1 of the 2016 Regulations. The Welsh text of the Regulations provides should read "fel petai" in new paragraph 8A instead of "fel a ganlyn". The English text reads "as if".

The same issue occurs again in Regulation 2(14)(b), which inserts a new paragraph (8) into Schedule 8 of the 2016 Regulations. In new paragraph (8) again, "fel a ganlyn" should read "fel petai". The English text reads "as if".

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 288 (W. 67)

TOWN AND COUNTRY PLANNING, WALES

The Developments of National Significance (Wales) (Amendment) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Developments of National Significance (Wales) Regulations 2016 ("the 2016 Regulations") in relation to the determination of applications for planning permission for the installation of overhead electric lines.

The installation of overhead electric lines with a nominal voltage of 132 KV or less and which are associated with devolved Welsh generating stations, is development of national significance or "DNS" by virtue of the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 as amended by the Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019.

Under paragraph 1 of Schedule 4D to the Town and Country Planning Act 1990, specified functions of the Welsh Ministers in relation to DNS may be undertaken by a person appointed to do so on their behalf (an "appointed person").

Regulation 2(3) inserts new regulation 11A into the 2016 Regulations, to prescribe specified functions in respect of overhead electric lines.

Regulation 2(5) inserts new regulation 18A, which makes provision for a report by the appointed person after an application is considered on the basis of written representations. New regulation 18A also allows the appointed person to cause a hearing or inquiry to be held if they have considered new evidence or matters of fact.

Regulation 2(6) inserts new regulation 28A, which makes similar provision in relation to applications considered by way of a hearing. Regulation 28A deals with the report and procedure where the determination is made by the appointed person. Regulation 28A also applies to applications dealt with by way of an inquiry.

Other paragraphs of regulation 2 make consequential amendments.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained at www.gov.wales.

WELSH STATUTORY INSTRUMENTS

2019 No. 288 (W. 67)

TOWN AND COUNTRY PLANNING, WALES

The Developments of National Significance (Wales) (Amendment) Regulations 2019

Made *18 February 2019*

Laid before the National Assembly for Wales *20 February 2019*

Coming into force *1 April 2019*

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales by section 321B of the Town and Country Planning Act 1990(**1**) and now exercisable by them(**2**), and conferred on them by section 323A of, and paragraph 1 of Schedule 4D to that Act(**3**), make the following Regulations:

Title and commencement

1.—(1) The title of these Regulations is the Developments of National Significance (Wales) (Amendment) Regulations 2019.

(2) These Regulations come into force on 1 April 2019.

(**1**) 1990 c. 8. Section 321B was inserted by section 81 of the Planning and Compulsory Purchase Act 2004 (c. 5).

(**2**) The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**3**) Section 323A was inserted by section 50 of the Planning (Wales) Act 2015 ("the 2015 Act"). Schedule 4D was inserted by paragraph 1 of Schedule 3 to that Act.

Amendments to the Developments of National Significance (Wales) Regulations 2016

2.—(1) The Developments of National Significance (Wales) Regulations 2016(**1**) are amended as follows.

(2) In regulation 2, in the definition of "appointed person" for "regulation 11" substitute "regulations 11 and 11A".

(3) After regulation 11, insert—

"Specified functions: electric lines

11A. In addition to those functions prescribed by regulation 11, the following functions are prescribed for the purposes of paragraph 1 of Schedule 4D to the 1990 Act in respect of development within regulation 3(1)(ab) of the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016(**2**)—

(a) functions under section 62F of the 1990 Act (developments of national significance: secondary consents)(**3**);

(b) functions under section 62J of the 1990 Act (duty to have regard to local impact report)(**4**);

(c) determining the application before the end of the determination period in accordance with section 62L(2) of the 1990 Act(**5**);

(d) determining an application under section 70(1) of the 1990 Act(**6**);

(e) functions under articles 28 and 29 of the 2016 Order;

(f) functions under these regulations—

(i) regulation 19 (proceeding to a decision);

(ii) regulation 29 (determination);

(iii) regulation 35 (determination);

(iv) regulation 36(1) (notice of decision)".

(4) In regulation 18 before paragraph (1) insert—

(**1**) S.I. 2016/56 (W. 26), amended by S.I. 2017/642 (W. 148).
(**2**) S.I. 2016/53 (W. 23), amended by S.I. 2016/358 (W. 111). Regulation 3(1)(ab) was inserted by the Developments of National Significance (Specified Criteria, Fees, and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019 (S.I. 2019/283 (W. 65)).
(**3**) Section 62F was inserted by section 20 of the 2015 Act.
(**4**) Section 62J was inserted by section 21 of the 2015 Act.
(**5**) Section 62L was inserted by section 22 of the 2015 Act.
(**6**) Section 70(1) was amended by paragraph 5 of Schedule 4 to the 2015 Act.

"(A1) This regulation applies where the function of determining the application is to be exercised by the Welsh Ministers."

(5) After regulation 18 insert—

"Report: electric lines

18A.—(1) This regulation applies where the function of determining the application is to be exercised by an appointed person.

(2) The appointed person must make a report in writing which must include the appointed person's conclusions and determination.

(3) The appointed person may cause a hearing or inquiry to be held if after having considered the written representations the appointed person is minded to take into consideration any new evidence or new matter of fact, not being a matter of policy.

(4) Where a hearing or inquiry is to be held, the appointed person must send to the applicant, the local planning authority and persons submitting written representations, a written statement of the matters with respect to which further representations are invited for the purposes of the appointed person's further consideration of the application.

(5) Those making further representations must ensure that such representations are received by the appointed person within such time as the appointed person states in the invitation under paragraph (4).

(6) Regulation 15(2) to (6) apply to any further representations submitted to the appointed person in accordance with paragraph (5), as if references to the Welsh Ministers were to the appointed person."

(6) In regulation 19(2) for "prescribed by regulations 15 and 18" substitute "prescribed by regulations 15, 18 and 18A".

(7) In regulation 20(2) for paragraph (c) substitute—

"(c) the Welsh Ministers or the appointed person have caused a hearing to be held pursuant to regulation 18(5) or regulation 18A(3),"

(8) In regulation 28 before paragraph (1) insert—

"(A1) This regulation applies where the function of determining the application is to be exercised by the Welsh Ministers."

(9) After regulation 28 insert—

"Procedure and report after a hearing: determination by an appointed person

28A.—(1) This regulation applies where the function of determining the application is to be exercised by an appointed person.

(2) After the close of the hearing—

(a) the assessor (if one is appointed) may make a report in writing to the appointed person in respect of the matters on which the assessor was appointed to assist;

(b) the appointed person must make a report in writing which must include the appointed person's conclusions and determination.

(3) Where an assessor makes a report in accordance with paragraph (2)(a), the appointed person must—

(a) append it to their report; and

(b) state in that report how far the appointed person agrees or disagrees with the assessor's report and, where the appointed person disagrees with the assessor, the reasons for that disagreement.

(4) When making the determination, the appointed person may disregard any written representations or other document received after the hearing has closed.

(5) If, after the close of the hearing, the appointed person proposes to take into consideration any new evidence or any new matter of fact (not being a matter of policy) which was not raised at the hearing and which the appointed person considers to be material to the determination, the appointed person must not come to a determination without first—

(a) notifying the applicant, the local planning authority and those persons who submitted written representations and took part in the hearing; and

(b) affording them an opportunity of making written representations.

(6) Those making written representations must ensure that such representations are received by the appointed person within the period stated in the appointed person's notification under paragraph (5)(a).

(7) The appointed person may cause a hearing to be re-opened as the person thinks fit.

(8) Where a hearing is re-opened (whether by the same or a different appointed person)—

(a) the appointed person must send to the applicant, the local planning authority and persons who submitted written representations or who took part in the hearing, a written statement of the matters with respect to which further representations are invited for the purposes of the appointed person's further consideration of the application; and

(b) regulation 26 applies as if the references to a hearing were references to a re-opened hearing.

(9) Regulation 15(2) to (6) apply to any evidence or representation in writing submitted to the appointed person in accordance with paragraph (6) of this regulation, as if references to the Welsh Ministers were to the appointed person.

(10) Regulation 29(b) is to be read as if reference to the period allowed in accordance with regulation 28(6) is reference to the period allowed in accordance with regulation 28A(6)."

(10) In regulation 30(3) for "Regulations 22 to 25 and 28" substitute "Regulations 22 to 25, 28 and 28A".

(11) In regulation 35(b) for "regulation 28(6)" substitute "regulation 28(6) or regulation 28A(6) (in either case as applied by regulation 30(3))".

(12) For regulation 40(1) substitute—

"**40.**—(1) This Part applies where a decision in relation to a secondary consent is made by—

(a) the Welsh Ministers—

(i) by virtue of section 62F(2) of the 1990 Act; or

(ii) under any other enactment where the Welsh Ministers consider that the secondary consent is connected to an application under section 62D of the 1990 Act; or

(b) an appointed person by virtue of regulation 11A(a)."

(13) In Schedule 1—

(a) in the Welsh text omit paragraph 8(b);

(b) after paragraph 8 insert—

"Procedure after inquiry: determination by an appointed person

8A. Regulation 28A (as it applies to inquiries by regulation 30(3)) is read as if—

(a) after paragraph (3) there is inserted—

"(3A) Where closed evidence was considered at the inquiry—

(a) the appointed person and assessor, where one has been appointed, must set out in a separate part ("the closed part") of their reports any description of that evidence together with any conclusions or decision in relation to that evidence; and

(b) where an assessor has been appointed, the appointed person must append the closed part of the assessor's report to the closed part of the appointed person's report and must state in the closed part of that report the level of agreement or disagreement with the closed part of the assessor's report and, where there is disagreement with the assessor, the reasons for that disagreement."

(b) in paragraph 8(a) after "applicant" there is inserted ", the appointed representative".

(14) In Schedule 8—

(a) after paragraph 1(3) insert—

"(3A) The report of the appointed person under regulation 18A (report: electric lines) or regulation 28A (procedure and report after a hearing: determination by an appointed person) must include, in addition to the appointed person's conclusions and determination in relation to the application, a recommendation or decision in relation to an order under section 247 of the 1990 Act."

(b) after paragraph (7) insert—

"(8) Regulation 28A is read as if—

(a) in paragraph (4) for "written representations or other document" there is substituted "objection to the making of an order under section 247 of the 1990 Act";

(b) in paragraph (5) for "submitted written representations" there is substituted "made objections to the making of an order under section 247 of the 1990 Act";

(c) in paragraph (8)(a) for "submitted written representations" there is

substituted "made objections to the making of an order under section 247 of the 1990 Act"."

Julie James
Minister for Housing and Local Government, one of the Welsh Ministers
18 February 2019

Explanatory Memorandum to:

1) The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019

2) The Developments of National Significance (Wales) (Amendment) Regulations 2019

3) The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019

4) The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019

The Explanatory Memorandum has been prepared by Planning Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

1) The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019;

2) The Developments of National Significance (Wales) (Amendment) Regulations 2019;

3) The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019; and

4) The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019

I am satisfied the benefits justify the likely costs.

Julie James
Minister for Housing and Local Government
20 February 2019

PART 1

1. Description

1.1 Sections 39 and 42 of the Wales Act 2017, among other things, prospectively devolve further responsibility to the Welsh Ministers for the consenting of onshore energy projects (excluding wind, responsibility for which is already devolved) up to and including 350MW and overhead electric lines up to and including 132KV where they are associated with a Welsh devolved generating station. These provisions will be commenced on 1 April 2019.

1.2 The legal effect of relevant provisions in the Wales Act 2017 is to place the consenting of this onshore infrastructure into the Town and Country Planning Act 1990 ("TCPA"). However, this creates a number of anomalies which require correction. The statutory instruments make consequential changes to procedures to enable the Welsh Ministers to determine such applications in the most appropriate way, as well as making some other minor procedural changes.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 The Explanatory Memorandum (including Regulatory Impact Assessment) covers four separate statutory instruments: one subject to the affirmative procedure and three which are subject to the negative procedure and which are scheduled to be laid conditional on the approval of the affirmative procedure statutory instrument by the National Assembly for Wales.

Statutory Instrument	**Procedure**
The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019	Affirmative
The Developments of National Significance (Wales) (Amendment) Regulations 2019	Negative
The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019	Negative
The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019	Negative

2.2 All of the above statutory instruments are reliant on each other and are interlinked through various references. It would not be possible to interpret the regulatory impacts made by each statutory instrument in isolation without explaining the wider legislative context. Hence, a composite Explanatory Memorandum has been prepared to describe these statutory instruments.

2.3 The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019 are made under section 2(2) of the European Communities Act 1972. There is a choice of procedure in relation to instruments made under section 2(2) of that Act. The Regulations are also made under section 71A of the Town and Country Planning Act 1990 (TCPA) which is subject to the negative procedure. There were no factors indicating the affirmative procedure should be used for these Regulations.

3. Legislative Background

The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019

3.1 Sections 39 and 42 of the Wales Act 2017 ("the 2017 Act"), among other things, make changes to the consenting arrangements for generating stations and overhead electric lines in Wales. In broad terms these sections devolve, to the Welsh Ministers, the function of granting consent in respect of the following to the Welsh Ministers ("newly devolved projects"):

(a) The consenting of generating stations both on and offshore with a capacity of 350MW or less. This excludes onshore wind, for which consenting for all such applications is already devolved to the Welsh Ministers; and
(b) The consenting of overhead lines with a nominal voltage of 132KV or less, where they are associated with a Welsh devolved generating station.

3.2 Part 3 of Schedule 6 to the 2017 Act also makes a number of minor and consequential amendments. The Wales Act 2017 (Commencement No.4) Regulations 2017 fully commences Sections 39, 42 and Part 3 of Schedule 6 on 1 April 2019. Hence, legislation relating to the newly devolved projects is included in the Regulations.

3.3 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 62D and 303 of the TCPA and powers conferred on the Secretary of State by section 333 of the TCPA, which are now exercisable by the Welsh Ministers.

3.4 Section 62D of the TCPA makes provision for applications for Development of National Significance ("DNS") to be made directly to the Welsh Ministers. Section 62D(3) states a development is DNS where it meets criteria specified in Regulations made by the Welsh Ministers for the purpose of section 62D.

3.5 Section 303 of the TCPA enables the Welsh Ministers to make Regulations in respect of fees for planning applications and deemed planning applications. This includes DNS applications.

The Developments of National Significance (Wales) (Amendment) Regulations 2019

3.6 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 321B and 323A and Paragraph 1(2) of Schedule 4D of the TCPA.

3.7 Of the provisions most relevant to these Regulations, paragraph 1(2) of Schedule 4D of the TCPA enables specified functions of the Welsh Ministers to be exercised by an appointed person.

3.9 Section 323A of the TCPA enables the Welsh Ministers, by Regulations, to prescribe the procedure to be followed in connection with an inquiry or hearing held by or on behalf of the Welsh Ministers by virtue of any provisions under the TCPA and any proceedings considered on the basis of representations in writing.

The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019

3.10 This Order is made in exercise of the powers conferred on the Welsh Ministers by sections 59, 61Z, 62R and 333 of the TCPA and powers conferred on the Secretary of State by section 62 of the TCPA, which are now exercisable by the Welsh Ministers.

3.11 Of the provisions most relevant to this Order, Section 61Z(5) of the TCPA enables the Welsh Ministers to prescribe, by Order, the specified persons who must be consulted about a proposed planning application.

3.12 Section 62 of the TCPA enables the Welsh Ministers to make provision as to the form, content, manner and particulars of a planning application, including pre-application consultation reports. This applies to DNS by virtue of the Developments of National Significance (Application of Enactments) (Wales) Order 2016.

3.13 Section 62R of the TCPA enables the Welsh Ministers, by Order, to make provision regulating a manner in which an application directly to the Welsh Ministers is dealt with by them.

The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019

3.14 These Regulations are made in exercise of the powers provided by section 2(2) of the European Communities Act 1972 and section 71A of the TCPA.

3.15 The Welsh Ministers were designated by The European Communities (Designation) (No.3) Order 2007 (S.I. 2007/1679) for the purposes of section 2(2) of the 1972 Act, to make regulations 'in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, insofar as it concerns town and country planning'.

3.16 The functions under section 71A of the TCPA were transferred to the National Assembly for Wales by S.I. 1999/672. Those functions were subsequently transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 1998.

4. Purpose and intended effect of the legislation

The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019

Changes to the specified criteria - Onshore generating stations

4.1 As a consequence of the changes made by the Wales Act 2017 (set out in paragraphs 3.1-3.2), the consenting of newly devolved projects will fall within Part 3 of the TCPA. The default position is the consenting of newly devolved projects will require planning permission from the Local Planning Authority ("LPA") under section 58 of the TCPA. This creates a perverse situation whereby already devolved smaller scale projects, such as generating stations between 10MW and 50MW are consented by the Welsh Ministers through the DNS process, whereby larger scale generating stations between 50MW and 350MW are to be consented at the local level by LPAs.

4.2 The evidence which underlies the specified criteria for DNS indicates the performance of LPAs in achieving timely decisions on large scale energy projects is not satisfactory. It would be illogical for smaller projects to be dealt with at the national level, with larger generating projects consented at the

local level. The purpose of this legislation is to alter this anomaly and ensure a logical and proportionate consenting procedure is in place.

4.3 In the Government response[1] to the consultation on DNS in 2015, it was stated the medium term objective would be to capture any new projects above the existing devolved upper limit as DNS. This view has not changed in the light of the devolution of generating stations of between 50MW and 350MW. The effect of the legislation is to extend the specified criteria for DNS to also include these projects.

Changes to the specified criteria - Overhead electric lines

4.4 Changes are proposed to the DNS specified criteria which relate to devolved overhead electric lines. Consents for overhead electric lines are currently issued under the Electricity Act 1989 (up to 132KV) or the Planning Act 2008 (132KV and above). These are both consents issued by the Secretary of State. Following commencement of the relevant parts of the Wales Act 2017, the consenting overhead electric lines up to and including 132KV which are associated with a devolved generating station will be placed within the TCPA for determination by LPAs by default.

4.5 Being determined by the LPA brings some concerns. Being linear projects, overhead electric lines tend to pass a number of LPAs. The requirement to gain separate consents from a number of LPAs may delay the development of such infrastructure in Wales.

4.6 Furthermore, overhead electric lines are necessary for the operational effectiveness and resilience of the electricity transmission and distribution network. Each link of the network, no matter what the scale, is critical to the network as a whole, ensuring power can be distributed sustainably and economically to customers. Accordingly, the purpose of this legislation is to address the need for such infrastructure to be consented at the national level.

4.7 The effect of this legislation is to place the consenting of overhead electric lines into the DNS process. While this may lead to the consenting of such lines taking longer than they do at present, the DNS process provides the only appropriate framework for decision at the national level in the TCPA, with appropriate consultation and scrutiny arrangements.

[1] Welsh Government, Developments of National Significance – Summary of responses and Government response, November 2015

Changes to the specified criteria - Electricity storage

4.8 A further purpose of these Regulations relates to energy storage. It is acknowledged there are emerging storage technologies which will increase clean generation and energy efficiency in Wales and help the transition to a low carbon economy.

4.9 Small scale storage projects of between 10MW and 50MW must seek planning consent under the DNS process. However, such projects typically have minor impacts and occupy minimal land. No storage projects have been consented through this process as the cost and time taken for decisions is seen as prohibitive to storage operators. Prior to the coming into force of the DNS process in 2016, the performance in consenting such projects appeared to be reasonable at the local level.

4.10 The purpose of this legislation is to remove consenting barriers and to reflect the physical scale and impacts of storage technologies being developed. The effect of the legislation is to remove storage projects from the current DNS process, for decision at a local level. This is considered to be a more proportionate way to determine such projects. This proposal will not include pumped hydroelectric storage schemes, which on the basis of prior projects, continue to have significant environmental effects.

Changes to fees for applications – Overhead electric lines

4.11 Paragraphs 4.16 to 4.19 below detail changes made by the Developments of National Significance (Wales) (Amendment) Regulations 2019 relating to the procedure for applications for overhead electric lines. A consequential change is made in the Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019 which removes the requirement to pay a fee to the Welsh Ministers for determining an application, where the application is not determined by them. This is in accordance with public finance principles.

Changes to fees for deemed applications – Appeals under section 177(1) of the TCPA

4.12 An anomaly has arisen where an appeal against an enforcement notice could potentially be brought in relation to a development which is ascribed DNS status, on the ground planning permission should have been granted for the development (a Ground (a) appeal under section 174(2)(a) of the TCPA). Section 177(1) of the TCPA provides the Welsh Ministers, on an appeal against an enforcement notice, may grant planning permission. Section 177(5) of the TCPA requires, where such an appeal is brought, the appellant

shall be deemed to have made an application for planning permission in respect of the matters in the enforcement notice as constituting a breach of planning control.

4.13 Where such an appeal is brought, legislation does not allow a fee to be allocated to the LPA where it concerns an application which would otherwise be a DNS. Current legislation provides a fee is payable for deemed applications if a fee would have been payable to the LPA on making an application for planning permission. However, as developments which qualify as DNS are made to the Welsh Ministers, no fee is payable to the LPA.

4.14 This situation is considered to be unfair, and the purpose of the legislation is to correct this anomaly. The LPA will ultimately bear the cost of issuing the enforcement notice, participating in an appeal and, if the appeal is unsuccessful, will also bear the cost of enforcing the planning permission. However, they will not be subsidised for this additional work. Were the application is a DNS application made directly to the Welsh Ministers, the LPA would receive a fee for participating in the application process. Accordingly, the Regulations make changes to address this and provide for a fee to be payable in these circumstances.

<u>The Developments of National Significance (Wales) (Amendment) Regulations 2019</u>

4.16 Paragraphs 4.4 – 4.7 above relates to the addition of devolved overhead electric lines to the specified criteria for DNS. The amendments made by the Developments of National Significance (Wales) (Amendment) Regulations 2019 have the purpose of expediting the process for such applications.

4.17 The development industry sees the current consenting process under the Electricity Act 1989 as proportionate and evidence suggests timely decisions are issued routinely under this arrangement. Decisions are typically made within 4-6 weeks by the Secretary of State. As of 1 April 2019, the Welsh Ministers will no longer have access to this regime where it concerns devolved overhead electric lines.

4.18 The DNS process has a maximum timeframe of 36 weeks, which can be significantly longer than the Secretary of State's decision period. At present, there is a requirement for all DNS projects to be determined by the Welsh Ministers, rather than an Inspector appointed to examine the application. This can make up 12 weeks of the 36 week determination period for a DNS project.

4.19 The effect of the legislation will be to remove this requirement where it concerns overhead electric lines to produce timelier decisions. There are no other logical areas in the DNS process where time savings can be achieved.

The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019

4.20 Paragraphs 4.4 – 4.7 above relate to the addition of devolved overhead electric lines to the specified criteria for DNS. Amendments made by the Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019 are consequential and add further validation requirements where a DNS application concerns a devolved overhead electric line. The effect of this change is to retain the status quo where it concerns the validation requirements for such applications and to reflect validation requirements for existing overhead electric line applications contained at Paragraph 1(2) of Schedule 8 of the Electricity Act 1989.

4.21 Additionally, the Order makes amendments to the list of bodies which must be consulted before the grant of planning permission for DNS. The effect of this change is to bring up to date the circumstances in which statutory bodies are consulted during the DNS application process with the circumstances specified in the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (as amended in this respect in 2016). This will ensure consistency with other planning applications.

The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019

4.22 Directive 2014/52/EU ("the 2014 Directive") requires the authority granting development consent for a particular project to make its decision in full knowledge of any likely significant effects on the environment. Before sections 39 to 42 of the Wales Act 2017 come into force, overhead electric lines are consented either under section 37 of the Electricity Act 1989 or the Planning Act 2008. The transposition of the 2014 Directive in relation to these projects is made by the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 ("the Electricity Works EIA Regulations").

4.23 Following the coming into force of sections 39 to 42 of the Wales Act 2017, the consenting of devolved overhead electric lines will fall within the Town and Country Planning Act 1990. Accordingly the Electricity Works EIA Regulations will cease to apply.

4.24 The purpose of these Regulations is to transpose the 2014 Directive as it will relate to devolved overhead electric lines in Wales from 1 April 2019. These Regulations will add the installation of devolved overhead electric lines to Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. The effect of this is such projects will require to be screened for the requirement for an Environmental Impact Assessment in advance of a planning application.

4.25 The Regulations also make a consequential change to transitional provisions to clarify alignment with the 2014 Directive.

5. Consultation

5.1 A 12 week consultation ran from 30 April to 23 July 2018 on changes to the consenting of infrastructure in Wales. The consultation was drawn to the attention of a wide range of stakeholders including LPAs, generating station operators and their representatives, businesses, planning consultants, interest groups and other public sector agencies. A total of 47 responses were received.

5.2 Of the questions relevant to these statutory instruments, there was broad agreement with the proposals. On the whole, while consultees are dismayed with the placing of overhead electric lines into the TCPA by the Wales Act 2017, there was general agreement the approach as set out in these statutory instruments was a pragmatic one. A number of responses were submitted asking for further guidance to accompany the DNS process. In response, existing guidance will be strengthened as a result.

5.3 A summary of the consultation responses is available at: https://beta.gov.wales/changes-approval-infrastructure-development.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Regulatory Impact Assessment

6.1 This Regulatory Impact Assessment assesses the cost and impacts of making changes to the Developments of National Significance ("DNS") specified criteria, as well as the consequential amendments to associated Regulations and Orders. It is divided into three parts and addresses three amendments to the DNS specified criteria. Those relate to:

(a) The consenting of generating stations between 50MW and 350MW;
(b) The consenting of devolved overhead electric lines up to and including 132KV; and
(c) The consenting of energy storage.

Consenting of applications for generating stations between 50MW – 350MW onshore

6.2 Two options have been considered:

- **Option 1** – Do nothing. Planning applications for consenting generating stations between 50MW – 350MW will be determined by the relevant LPA(s) (with the exception of onshore wind)

- **Option 2** – The maximum thresholds for Developments of National Significance ("DNS") for generating stations (with the exception of onshore wind) are extended from 50MW to 350MW to ensure all applications of between 10MW – 350MW are consented via the DNS regime and determined by the Welsh Ministers. This is the preferred option.

Option 1 - Do nothing. Planning applications for consenting generating stations between 50MW – 350MW will be determined by the relevant LPA(s) (with the exception of onshore wind).

Description

6.3 The Wales Act 2017 devolves further responsibility for the consenting of energy and infrastructure projects to Wales, including extending the threshold of onshore energy generating projects to 350MW. This does not include applications for onshore wind, which are all consented in Wales, regardless of the output.

6.4 This option would retain the default position set out in the Wales Act 2017, whereby applications of between 10MW – 50MW would be consented via the DNS process and applications up to 10MW and those between 50MW – 350MW would be consented at the local level by the relevant LPA(s).

Costs

Welsh Government

6.5 This option would see no additional costs to the Welsh Ministers as the additional consenting powers for determining applications of between 50MW – 350MW would be undertaken by the relevant LPA(s) as the prescribed consenting authority.

Local Planning Authority

6.6 In the past 8 years, since the coming into force of the Planning Act 2008, there have been a total of 9 applications submitted for an energy generating station of between 50MW – 350MW within Wales, which is an average of 1.1 applications per annum.

6.7 As this option would require decisions on planning applications to be made at the local level, these applications would be subject to fees prescribed in the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 ("the 2015 Regulations") and be calculated by site area, rather than output. Evidence shows a significant variation between the site area of these applications, which range from 4 hectares to 1,581 hectares. Based on a fee of £190 per 0.1 hectares[2] (up to a maximum fee of £287,500), this results in fees of between £7,600 - £287,500 for the 9 applications.

6.8 The average site area of applications between 50MW and 350MW is 542 hectares, which would result in an average fee of £287,500. Based on an average of 1.1 applications per annum, LPAs would make fee revenue of £316,250, which would be offset by the cost of determining the application.

6.9 Furthermore, applicants may also wish to pursue pre-application discussions with the relevant LPA(s) prior to the submission of their application. This will result in a cost to LPAs for providing these services; however, this service is discretionary and costs won't apply in all cases. Thus, the impact has not been assessed.

[2] Schedule 1 – The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015

Development Industry

6.10 Application fees would be subject to the 2015 Regulations which are required to be paid by developers to LPAs to cover the costs of examining and determining these applications.

6.11 Based on the average number of applications submitted in Wales which fall within this threshold being 1.1 and the likely fee per application (expected to be the maximum £287,500 based on the average area of a development site) developers can expect to incur costs of approximately £316,250 per annum.

6.12 Furthermore, developers bear the cost of preparing their proposed scheme and using the planning system to obtain planning permission. Applications usually require the payment of a fee (or fees) to the relevant consenting authority.

6.13 Although developer costs will vary according to the size of a development, it is estimated the cost of preparing an application is £137,600 and £151,500 per year[3].

6.14 The total estimated annual costs to the development industry will be £467,750.

The Community

6.15 The community and interested parties will have the ability to review and comment on proposed schemes submitted to LPAs. However, it is not possible to quantify a financial figure based on the time spent commenting on proposed schemes.

Benefits

Welsh Ministers

6.16 There are no identifiable benefits to the Welsh Government as although they would remain as the determining authority for applications relating to onshore generating stations of between 10MW – 50MW, it would be LPAs who would be responsible for determining similar applications of between 50MW – 350MW which would arguably be of greater national significance. This results in an illogical situation.

[3] Developments of National Significance – Explanatory Memorandum and Regulatory Impact Assessment (2015) – Uprated to 2017/18 costs.

Local Planning Authorities

6.17 As the determining authority, LPAs will have greater influence on proposed developments in their area, rather than the Welsh Ministers at the national level determining such applications. However, LPAs may not posses the relevant expertise to determine applications of such a scale.

Development Industry

6.18 There are no identifiable benefits to developers as evidence indicates LPA performance in determining larger scale energy projects in a timely manner is poor and therefore, applications may be subject to significant delays. Furthermore, such applications will not be subject to a statutory timeframe, providing less certainty for developers, while decision making may be subject to local politics.

The Community

6.19 Community benefits will be negligible as they may contribute and participate in the planning process in the same way.

Option 2 – The maximum thresholds for Developments of National Significance ("DNS") for generating stations are extended from 50MW to 350MW to ensure all applications of between 10MW – 350MW are consented via the DNS regime and determined by the Welsh Ministers.

Description

6.20 To rectify a perverse situation whereby the Welsh Ministers would be the consenting authority for applications of 10MW – 50MW and LPAs would be the consenting authority for applications of 50MW – 350MW, this option proposes to increase the existing DNS thresholds from 50MW to 350MW. This would result in LPAs being the consenting authority for applications up to 10MW and the Welsh Ministers the consenting authority for applications of between 10MW – 350MW.

Costs

Welsh Government

6.21 This option would see a cost and revenue increase to the Welsh Ministers for dealing with additional applications of between 50MW – 350MW.

6.22 As discussed in Option 1, there will be a total of 1.1 applications per year between 50MW – 350MW. The cost of dealing with these applications via the DNS regime will vary on a case-by-case basis.

6.23 Although the DNS process has standard fees for many of the procedures included in dealing with an application (e.g. notification fee, initial fee, LIR costs and determination fee), the fees set for examination are based on a daily rate and vary between written representations and hearings / inquiries.

6.24 Furthermore, the DNS process provides for either one of, or any combination of the three examination procedures to ensure this process is proportionate. For example, an application may be examined solely by written representations, a hearing or an inquiry, or may be predominately examined by written representations, with hearings and / or inquiries reserved for specific topics.

Table 1 – Estimated minimum costs (excluding pre-application services) for each procedure			
Procedure	Written Representations	Hearing	Inquiry
Notification	£580	£580	£580
Validation, Representations and Publicity, Determination of procedure	£15,350	£15,350	£15,350
Daily Costs[4]	£10,400	£11,040	£16,560
Advertising (Actual)	£0	£500	£500
Venue Hire (Actual)	£0	£1,600	£2,400
Welsh Ministers	£14,700	£14,700	£14,700
TOTAL	**£41,030**	**£43,700**	**£50,090**

6.25 Based on the size and scale of potential applications within this threshold, we can assume the majority, if not, all, will be examined by the inquiry procedure. With approximately 1.1 applications submitted each year, this will result in a total cost to the Welsh Ministers of £55,100 per annum. However, these costs will be offset by the submission of relevant fees by developers, resulting in a cost-neutral option to the Welsh Ministers.

[4] Estimated days: Written Representations / Hearing = 12; Inquiry = 18. Daily Rate: Written Representations = £870; Hearing / Inquiry = £920

6.26 The fees for Option 2 are significantly lower as they are not based on a spatial threshold, and purely on the time taken to determine the application.

Local Planning Authority

6.27 This option will be cost neutral to LPAs, as they would not be required to examine and determine applications of between 50MW – 350MW. This will mean LPAs will not receive fee revenue, however, there will be no cost incurred in determining applications. LPAs will instead be required to complete an LIR, the £7,750 cost of which will be borne by developers.

Development Industry

6.28 This option will benefit developers by reducing their costs for submitting an application. This cost will be £55,100 per year, compared to the annual cost of £316,250 under the 2015 Regulations. The cost of preparing an application will remain the same as Option 1, which is £137,600 per application or an average of £151,500 per year[5]. The total estimated annual costs to the development industry will be £206,600.

6.29 In addition to application costs, developers are required to cover the costs of the production and submission of an LIR by the relevant LPA, which is £7,750 where the application is not for a variation. This will result in an additional cost of £8,525 per year, and a total of £215,125.

6.30 This will result in an overall cost saving for developers of £252,625.

6.31 Additional costs may be incurred by developers, should they seek pre-application advice from either the Welsh Ministers, relevant LPA or both. However, as seeking pre-application services is discretionary and not a mandatory requirement, we are unable to quantify the financial costs for these services

The Community

6.32 The community and interested parties are able to review and comment on proposed schemes submitted to the Welsh Ministers and local planning authorities. However, it is not possible to quantify a financial figure based on the time spent commenting on proposed schemes.

[5] Developments of National Significance – Explanatory Memorandum and Regulatory Impact Assessment (2015) – Uprated to 2017/18 costs.

6.33 There is also provision in DNS which enables community and town councils to submit a voluntary LIR. Where they consider it necessary to do so, community and town councils will require time to compile and submit such a report. However, members and volunteers of such councils are generally non-salaried; therefore, this impact is also not financially quantifiable.

Benefits

Welsh Government

6.34 As the consenting authority for applications between 50MW – 350MW, the Welsh Ministers will be able to determine those applications considered of greater national significance, rather than decisions being made at the local level. This will address the consenting issue where it would be illogical for smaller projects to be dealt with at the national level, with larger projects consented at the local level.

Local Planning Authorities

6.35 By extending the DNS thresholds to capture larger scale projects for determination at the national, rather than local level, LPAs will have greater resource and less time restrictions to focus on their day-to-day role in administering the planning system within their locality.

6.36 However, LPAs will retain the ability to have an input in the merits of an application submitted within their locality by submitting an LIR and also encouraging applicants to engage in pre-application discussions.

Development Industry

6.37 As well as greater consistency in the determination process, developers will also benefit from more timely decisions, as the current energy thresholds for DNS indicates the performance of LPAs in achieving timely decisions on large scale energy projects is not satisfactory.

The Community

6.38 The community and interested parties are able to review and comment on proposed schemes in the same way as they would to LPAs.

Justification for two options

6.39 The overall aim for large scale energy projects up to 350MW is to ensure consistency for developers, as well as proportionality. The proposed default

position would see the Welsh Ministers determining medium-scale applications for generating stations via the DNS regime and LPAs determining significantly larger projects.

6.40 Therefore, the only possible solution to remedy this is to either have all proposed projects up to 350MW determined via the DNS regime by the Welsh Ministers, or to continue an illogical default position,

Summary and preferred option

6.41 The current proposed arrangements (set out in option 1) will result in a perverse situation whereby the Welsh Ministers will determine applications between 10MW – 50MW via the DNS regime (i.e. those of national significance) and applications up to 10MW and between 50MW – 350MW would be determined by LPAs via the Town and Country Planning regime. This offers developers no consistency. Furthermore, evidence which underlies the current energy thresholds for DNS indicates the performance of LPAs in achieving timely decisions on large scale energy projects is not satisfactory.

6.42 In order to improve consistency, extending the DNS threshold to capture projects up to 350MW will ensure only the Welsh Ministers are the relevant determining authority, rather than a combination of LPAs and the Welsh Ministers. Therefore, option 2 is the preferred option.

Table 2: Costs of Option 1 and 2

	Option 1	Option 2
Welsh Ministers	£0 (cost neutral)	£0 (cost neutral)
LPAs	£0 (cost neutral)	£0 (cost neutral)
Development Industry	£467,750	£215,125
The Community	N/A	N/A

Overhead electric lines (up to 132KV)

6.43 Three options have been considered:

- **Option 1** – Do nothing. Planning applications for overhead electric lines (up to and including 132KV), where they are associated with a devolved generating station, are determined by the relevant LPA(s).

- **Option 2** – Amend thresholds and criteria for DNS to include overhead electric lines up to and including 132KV, where they are associated with a devolved generating station, to be determined by the Welsh Ministers. By default, altering this threshold will not remove any existing permitted development rights.

- **Option 3** - Amend thresholds and criteria for Developments of National Significance to include overhead electric lines up to 132KV, where they are associated with a devolved generating station, to be determined by an appointed person, namely a Planning Inspector. By default, altering this threshold will not remove any existing permitted development rights. This is the preferred option.

Option 1 – Do nothing. Planning applications for overhead electric lines (up to and including 132KV), where they are associated with a devolved generating station, are determined by the relevant LPA(s).

Description

6.44 Consents to install overhead electric lines are currently issued under section 37 of the Electricity Act 1989 (up to and including 132KV) or the Planning Act 2008 (132KV and above). These are both consents issued by the Secretary of State. From 1 April 2019, the Wales Act 2017 places consenting for these electric lines into the Town and Country Planning Act 1990 ("TCPA") for such projects to be determined by local planning authorities ("LPA"), by default, where they are associated with a devolved generating station.

Costs

Welsh Government

6.45 There are no costs associated with the Welsh Government as the consenting of overhead electric lines would be the responsibility of the relevant LPA(s).

Local Planning Authority

6.46 As this option would see these applications being determined by the LPA, they would be subject to the relevant fees prescribed by this Act which are set out the in Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 ("the 2015 Regulations"). However, there are no specific fees set out in the relevant Schedule to the 2015 Regulations to apply to overhead electric lines; therefore, estimated costs to LPAs are based on Category 9(b) of Part 2 to Schedule 1 to the 2015 Regulations (the carrying out of any operations not coming within any of the above categories) which specifies a fee of £190 for each 0.1 hectare of a site area, subject to a maximum fee of £287,500.

6.47 Since 2010, BEIS have received approximately 600 applications for overhead electric lines in the Scottish Power Electricity Networks and Western Power Distribution areas under section 37 of the Electricity Act 1989. Those areas largely cover Wales, though also cover parts of England. BEIS or the Distribution providers do not maintain a list of whether those applications are in Wales, the nominal voltage of those lines, their length and information on whether those applications are associated with a devolved generating station on all occasions, although some sporadic information is available. Accordingly, the impact on these applications cannot be assessed.

6.48 While this is the case, information is available on applications submitted which have a nominal voltage of 132KV since 2010, which are determined under the Planning Act 2008. Two such applications have been received in this period, which is a total of 0.25 per year. The average line length and width of these applications are 23 km and 0.003 km wide, this is equivalent to 23,000 m in length and 3m wide which calculates to 69,000 sq. m. 69,000 sq. km translates to 6.9 hectares, therefore, the average application would cost LPAs £13,110 under the 2015 Regulations. This is an annual cost and revenue of £3,280 per year.

Development Industry

6.49 The cost to developers in application fees will be approximately £3,280 per year for applications of 132KV. No assessable information is available on the amount of applicable applications below this level. Developers also bear the cost of preparing a planning application. This cost will be the same under all Options.

The Community

6.50 The community and interested parties are able to review and comment on proposed schemes submitted to the Welsh Ministers and local planning

authorities. However, it is not possible to quantify an amount based on the time spent commenting on proposed schemes.

Benefits

Welsh Government

6.51 There are no identifiable benefits to the Welsh Ministers as it would be LPAs determining what are arguably projects of national significance. Ultimately, overhead electric lines are necessary for the operational effectiveness and resilience of the electricity transmission and distribution network. Each link of the network, no matter what the scale, is critical to the network as a whole, ensuring power can be distributed sustainably and economically to customers.

Local Planning Authority

6.52 There are no identifiable benefits to LPAs as there will be significant financial and resource implications for having to both determine applications for overhead electric line and potentially liaising with neighbouring LPAs to ensure the appropriate permissions can be viewed as one project.

Development Industry

6.53 Being consented at the local level means certain applications for overhead electric lines may pass through multiple LPAs. This will then require separate consents from each LPA, leading to potential delays. Furthermore, the timing of decisions would be uncertain as well as decisions on vital infrastructure being subject to local politics.

The Community

6.54 With applications being determined at the local level, communities may respond and contribute to applications, where required.

Option 2 – Amend thresholds and criteria for Developments of National Significance to include overhead electric lines up to and including 132KV, where they are associated with a devolved generating station, to be determined by the Welsh Ministers. By default, altering this threshold will not remove any existing permitted development rights.

Description

6.55 Rather than LPAs being the determining authority for overhead electric lines applications up to 132KV, this option would transfer this function into the DNS regime and instead, be determined by the Welsh Ministers.

6.56 This option would retain the requirement for all DNS projects to be determined by the Welsh Ministers, which can take up to 36 weeks.

Costs

Welsh Government

6.57 Applications for overhead electric lines up to and including 132KV (where they are associated with a devolved generating station) would be subject to fees prescribed in the Developments of National Significance (Fees) (Wales) Regulations 2016, set out in Table 1 above.

6.58 Of the known applicable applications submitted since 2010 for overhead electric lines, only one has currently been subject to public examination, by way of an event, which was undertaken by a combination of written representations and hearings. As applications for overhead electric lines are generally uncontroversial, we can assume this would be the likely form of examination procedure for similar applications.

6.59 In terms of costs, we can estimate this will be a total of between £41,030 and £43,700 per application. Based on an estimated 0.25 applications submitted per annum, this will result in a cost to the Welsh Ministers of between £10,260 and £10,925 which will be balanced by fee revenue.

Local Planning Authorities

6.60 Transferring applications for overhead electric lines up to and including 132KV into the DNS regime will require LPAs to produce and submit a Local Impact Report ("LIR") for each DNS application. The costs to produce an LIR on a new application is £7,750 per application. Based on an estimated average of 0.25 applications per annum, the total cost to LPAs would be £1,940 per year, which will be offset by fee revenue.

Development Industry

6.61 As discussed in paragraphs Option 1, developers bear the cost of preparing their proposed scheme and using the planning system to obtain planning permission. Applications usually require the payment of a fee (or fees) to the relevant consenting authority. From the 0.25 applications per year, it is estimated the total fee, including LIR, will be between £12,200 and £12,865.

The Community

6.62 The community and interested parties are able to review and comment on proposed schemes submitted to the Welsh Ministers and local planning authorities. However, it is not possible to quantify a financial figure based on the time spent commenting on proposed schemes.

6.63 There is also provision in DNS which enables community and town councils to submit a voluntary LIR. Where they consider it necessary to do so, community and town councils will require time to compile and submit such a report. However, members and volunteers of such councils are generally non-salaried; therefore, this impact is also not financially quantifiable.

Benefits

Welsh Government

6.64 As the consenting authority for applications relating to overhead electric lines up to and including 132KV, the Welsh Ministers will be able to determine those applications considered of greater national significance, rather than decisions being made by LPAs.

Local Planning Authorities

6.65 By extending the DNS thresholds to capture larger scale projects for determination at the national, rather than local level, LPAs will have greater resource and less time restrictions to focus on their day-to-day role in administering the planning system within their locality. However, LPAs will retain the ability to have an input in the merits of an application submitted within their locality by submitting an LIR and also encouraging applicants to engage in pre-application discussions.

Development Industry

6.66 Although developers would see an increase in costs and determination times when compared to option 1, they benefit from potentially only submitting one application for determination as applications for overhead electric lines may extend beyond one LPA boundary, which will then require separate applications for each part of the electric line falling within each LPA boundary leading to potential delays.

The Community

6.67 Although applications would be determined at the national level rather than local level under this option, the community and interested parties will still retain the right to comment on, and put forward representations relating to an application.

6.68 Community and Town councils will also benefit from this option by having the ability to submit an LIR to the Welsh Ministers.

Option 3 - Amend thresholds and criteria for Developments of National Significance to include overhead electric lines up to 132KV, where they are associated with a devolved generating station, to be determined by an appointed person, namely a Planning Inspector. By default, altering this threshold will not remove any existing permitted development rights.

Description

6.69 Similar to option 2, this option would see applications for overhead electric lines up to 132KV be examined and determined by the Welsh Ministers rather than at the local level, where they are associated with a devolved generating station.

6.70 However, at present, there is a requirement for all DNS projects to be determined by the Welsh Ministers, rather than by an Inspector appointed on their behalf. This option would seek to amend the current arrangements by allowing the Welsh Ministers to appoint an Inspector on their behalf to undertaking the examination and determination of these applications.

Costs

Welsh Government

6.71 As set out in Option 2, the cost to the Welsh Ministers will be between £41,030 and £43,700 per application. However, in these instances, the Welsh Ministers will not recover the application for determination. This costs £14,700. Thus, the total cost the Welsh Ministers will be between £26,330 and £29,000. This will be offset by fees.

Local Planning Authorities

6.72 There will be no additional costs to LPAs under this option when compared to option 2. Therefore, the total estimated costs to LPAs will be approximately £1,940 per year.

Development Industry

6.73 There will be a cost saving to developers under this option when compared to Option 2, as fees will be lower. Under Option 2, including LIR, fees will be between £12,200 and £12,865. However, as the Welsh Ministers' cost of £14,700 for determining the application will not be included, the total estimated cost will be approximately between £8,525 and £9,190; a saving on Option 2.

The Community

6.74 Similar to option 2, the community and interested parties are able to review and comment on proposed schemes submitted to the Welsh Ministers and local planning authorities. However, it is not possible to quantify a financial figure based on the time spent commenting on proposed schemes.

6.75 The ability for community and town councils to submit an LIR will also remain.

Benefits

Welsh Government

6.76 The ability for the Welsh Ministers to transfer responsibility for determining applications for overhead electric lines to an Inspector will mean the Welsh Ministers can use the resources saved from determining these applications to carry out the necessary work to determine more complex and controversial applications.

6.77 There is also the additional benefit of Welsh Ministers retaining the power to recover jurisdiction over DNS applications, should they consider it appropriate.

Local Planning Authorities

6.78 Similar to Option 2, LPAs will have greater resource and less time restrictions to focus on their day-to-day role in administering the planning system within their locality.

6.79 However, LPAs will retain the ability to have an input in the merits of an application submitted within their locality by submitting an LIR and also encouraging applicants to engage in pre-application discussions.

Development Industry

6.80 As with Option 2, developers will only need to engage with a singe consenting authority rather than potentially having to submit an application to more than one LPA (in cases where a development would cross LPA boundaries).

6.81 At present, there is a requirement for all DNS projects to be determined within a 36 week period. However, by allowing Inspectors to determine applications for overhead electric lines, this can reduce the existing timeframe by 12 weeks, providing timelier decisions to developers, along with a cost saving.

The Community

6.82 Although applications would be determined at the national level rather than local level under this option, the community and interested parties will still retain the right to comment on, and put forward representations relating to an application.

6.83 Community and Town councils will also benefit from this option by having the ability to submit an LIR to the Welsh Ministers.

Summary and preferred option

6.84 The potential for overhead electric line applications to pass through a number of LPA boundaries will mean separate consents will be required, potentially leading to significant delays to developers. It is therefore preferable for these applications to be determined at the national level, ensuring one consenting authority.

6.85 However, compared to existing timeframes, the Welsh Ministers will have a 36 week determination period for these applications under the DNS regime, unless they have the ability to appoint an Inspector to determine them on their behalf, which can reduce this timescale by 12 weeks. While there will be additional cost to developers relative to Option 1, the benefit outweighs this cost.

6.86 Therefore, option 3 is the preferred option.

Table 3: Option 1, Option 2 and Option 3			
	Option 1	Option 2	Option 3
Welsh Ministers	£0 (cost neutral)	£0 (cost neutral)	£0 (cost neutral)
LPAs	£0 (cost neutral)	£0 (cost neutral)	£0 (cost neutral)
Development Industry	£3,280*	Between £12,200 and £12,865*	Between £8,525 and £9,190*
The Community	N/A	N/A	N/A

*Due to a lack of available information, these costs do not include overhead electric lines under 132KV.

Energy storage

6.87 Two options have been considered:

- Option 1 – Do nothing. Energy storage applications above 10MW continue to be determined by the Welsh Ministers via the Developments of National Significance ("DNS") regime.

- Option 2 – Remove energy storage applications above 10MW from DNS, for determination at the local level by the relevant LPA. This is the preferred option.

Option 1 – Do Nothing. Energy storage applications above 10MW continue to be determined by the Welsh Ministers via the DNS regime.

Description

6.88 This option would retain the status quo and applications for energy storage projects above 10MW must seek planning consent via the DNS process.

Costs

Welsh Government

6.89 In the 2.5 years since DNS came info force, no applications for energy storage have been received by the Welsh Ministers, therefore, it is not possible to quantify the likely costs to the Welsh Ministers over a set period. However, Table 1 (above) sets out the estimated minimum costs for engaging in the DNS process.

6.90 Between 2006 – 2016 one application for energy storage was submitted in Wales, which consisted of a 10MW battery storage project. Although this application pre-dated the DNS process, research[6] has indicated the application was determined within a five week period and there were no significant hurdles in the planning process.

6.91 Based on this information, it would be reasonable to assume the majority of applications for a storage facility of above 10MW would likely be examined by way of either written representations or by hearing (or a combination of these procedures). Therefore, estimated costs to the Welsh Ministers for examining and determining an application within this threshold would likely cost between £41,030 and £43,700. However, these costs will be recovered through fee revenue and is therefore, cost-neutral.

6.92 Developers may also seek pre-application services from the Welsh Ministers, which would also incur a cost. However, as seeking pre-application services is discretionary and not a mandatory requirement, we are unable to quantify the financial costs for these services.

Local Planning Authority

6.93 Retaining energy storage applications within DNS will require LPAs to produce and submit a Local Impact Report ("LIR") for each DNS application. The cost of producing an LIR on a new scheme is £7,750. These costs will be recovered through fee revenue.

Development Industry

6.94 Applications for storage above 10MW will likely be examined by written representations or hearing (or a combination of these procedures), although if deemed necessary, hearings and inquiries will be used. This is a cost of approximately between £41,030 and £43,700 per application, along with a fee

[6] Research into the thresholds and criteria for Development of National Significance in Wales (prescribed under Section 62D of the Town and Country Planning Act 1990 – Parsons Brinckerhoff (April 2017)

for the production of an LIR to the LPA of £7,750. This is a total of between £48,780 and £51,450 in fees per application.

6.95 Further additional costs may be incurred by developers, should they seek pre-application advice from either the Welsh Ministers, relevant LPA or both. However, as seeking pre-application services is discretionary and not a mandatory requirement, we are unable to quantify the financial costs for these services.

6.96 The cost of preparing an application has not been assessed as this would be the same in all cases.

The Community

6.97 The community and interested parties are able to review and comment on proposed schemes submitted to the Welsh Ministers and local planning authorities. However, it is not possible to quantify a financial figure based on the time spent commenting on proposed schemes.

6.98 There is also provision in DNS which enables community and town councils to submit a voluntary LIR, although none have been submitted to date. Where they consider it necessary to do so, community and town councils will require time to compile and submit such a report. However, members and volunteers of such councils are generally non-salaried; therefore, this impact is also not financially quantifiable.

Benefits

Welsh Government

6.99 There are no identifiable benefits to the Welsh Government as they would remain as the determining authority for applications relating storage projects above 10MW. The DNS process would be used to determine applications which are unlikely to be proportionate to the process.

Local Planning Authority

6.100 Although LPAs would be the consenting authority for applications of up to 10MW, they would retain a role within the DNS process by having the ability to submit LIRs to the Welsh Ministers, ensuring these representations are taken into account when examining and determining an application. However, it would be more appropriate for LPAs to be the determining authority for applications up to 10MW.

Development Industry

6.101 There are no identifiable benefits to the development industry under this option, as the DNS regime can act as a consenting barrier when assessing the minimal physical scale and impacts of storage technologies above 10MW. Furthermore, this option would see developers being required to submit an application through different consenting regimes (either DNS or TCPA), depending on the size of a proposed development.

The Community

6.102 Communities and interested parties would benefit from the opportunity to review and comment on proposed schemes submitted to the Welsh Ministers and LPAs.

6.103 There is also provision in DNS which enables community and town councils to submit a voluntary LIR. Where they consider it necessary to do so, community and town councils will require time to compile and submit such a report.

Option 2 – Remove energy storage applications above 10MW from DNS, for determination at the local level by the relevant LPA.

Description

6.104 This option would see the removal of storage projects from the DNS process (i.e. between 10MW – 50MW) and transfer the examination and determination of these applications back to LPAs, who would now be responsible for consenting all applications for energy storage up to 350MW, onshore.

Costs

Welsh Government

6.105 As this option proposes applications for storage up to 350MW being examined and determined at the local level, the Welsh Ministers will not receive fee revenue of between £41,030 - £43,700 per application. However, as the DNS process is predicated on full cost recovery, the impact would be cost-neutral. As discussed in Option 1, there have been no applications for storage submitted to the Welsh Ministers under the DNS process.

Local Planning Authority

6.106 LPAs will be required to examine and determine applications for storage, up to 350MW, which will incur a cost for undertaking this work.

6.107 However, rather than applications being determined using the current DNS fees, they will be subject to fees set out in the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 ("the 2015 Regulations").

6.108 As there are no specific fees set out in the relevant Schedule to the 2015 Regulations to apply to energy storage facilities, estimated costs to LPAs are based on Category 9(b) of Part 2 to Schedule 1 to the 2015 Regulations (the carrying out of any operations not coming within any of the above categories) which specifies a fee of £190 for each 0.1 hectare of a site area, subject to a maximum fee of £287,500.

6.109 Although little evidence is available due to a lack of storage applications having been submitted in Wales, the case study identified in Option 1 was based on a 10MW storage facility which covered 0.27 hectares.

6.110 The 2015 Regulations specify a fee of £190 per 0.1 hectare. Therefore, the application for a 10MW storage facility would require a fee of £570.

6.111 There will also be a loss of revenue for LPAs who will no longer be required to produce and submit an LIR. While this is the case, the fees apportioned for the determination of an application and the production of an LIR are based on actual costs. This option is therefore cost-neutral.

Development Industry

6.112 Developers will still be required to submit a fee with their application for storage, although they would be subject to the fees prescribed in the 2015 Regulations rather than DNS fees and therefore, taking account of site area rather than output.

6.113 Developers will be required to pay a fee of £570 on average per application. This is a saving of between £48,210 and £50,880 on Option 1. The Development Industry will also be required to bear the cost of preparing an application.

The Community

6.114 Similar to option 1, communities and interested parties will continue to have the opportunity to put forward their representations on proposed schemes to the LPA, although it is not possible to quantify a sum based on the time spent commenting on proposed schemes.

6.115 if storage applications are removed from the DNS process, community and town councils will be unable to submit an LIR, although, they will retain the opportunity to put forward representations outlining their views.

Benefits

Welsh Government

6.116 Removing storage projects from DNS will allow the Welsh Government to focus resources on other applications and consents which require greater input and more time.

Local Planning Authority

6.117 As the determining authority, LPAs will have greater influence on developments of a local scale in their area.

Development Industry

6.118 As well as a significant cost saving in relation to application costs, developers can expect barriers to the consenting process to be removed and an overall more proportionate method for determining storage applications.

The Community

6.119 Benefits to the community and interested parties will be negligible as these groups may contribute and participate in the planning process in the same manner as discussed in option 1.

Justification for 2 options

6.120 The consenting of any development remains enshrined in the TCPA regime, including energy storage. However, the only variable is the process. This may be either DNS, as at present, or conventional planning permission from LPAs. There are no other alternatives.

Summary and preferred option

6.121 Evidence[7] has suggested storage projects would be better suited to being determined at the local level rather than the national level. Furthermore, the current proposed arrangements (set out in Option 1) will introduce a situation

[7] Research into the thresholds and criteria for Development of National Significance in Wales (prescribed under Section 62D of the Town and Country Planning Act 1990 – Parsons Brinckerhoff (April 2017)

where both LPAs and the Welsh Ministers would be the relevant consenting authority, depending on the threshold of a project, which does not offer developers consistency where it concerns storage applications.

6.122 In terms of costs, both options are cost-neutral for the Welsh Ministers and LPAs as the fees required to be submitted with an application are set at a level which achieves cost recovery for these determining authorities. However, Option 2 provides a significant cost saving to developers, which may result in a greater number of applications being submitted in Wales as a more attractive option to developers.

6.123 In order to ensure proportionality and consistency, moving storage projects out of the DNS regime for determination at the local level is the most suitable way forward. Therefore, Option 2 is the preferred option.

Table 4: Option 1 and Option 2 (cost per-application)

	Option 1	Option 2
Welsh Ministers	£0 (cost neutral)	£0 (cost neutral)
LPAs	£0 (cost neutral)	£0 (cost neutral)
Development Industry	Between £48,780 and £51,450	£570
The Community	N/A	N/A

ANNEX 1: COMPETITION FILTER

Question	Answer
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Agenda Item 4.5

SL(5)351 – The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019

Background and Purpose

The Town and Country Planning (General Permitted Development) Order 1995 ("the GDPO"), as amended, allows some minor developments to be undertaken without the need to submit a planning application. This is known as "permitted development".

This Order amends the GPDO by:

- Permitting the installation of electrical outlets and upstands for recharging electric vehicles;
- Permitting the installation of certain overhead lines;
- Extending permitted development rights in relation to the height and width of ground-based masts and extending the period for the use of land and moveable electronic communications apparatus from six to eighteen months.
- Making amendments in relation to the construction, installation and replacement of certain apparatus for fixed line broadband services.
- Extending permitted development rights for non-domestic solar installations while prohibiting installation within three kilometres of the perimeter of an airport or aerodrome.

Procedure

Negative.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2(vi) in respect of this instrument – that the drafting appears to be defective:

- In paragraph A.2(1)(a)(i) of Schedule 1 to this instrument, the reference to **section** 10(b) [emphasis added] of the Schedule to the Electric Lighting (Clauses) Act 1899 should refer to **paragraph** 10(b) [*emphasis added*] of the Schedule to the Electric Lighting (Clauses) Act 1899.
- Paragraph A.3(5) of Schedule 2 to this instrument contains the wording "*in receipt of the application under paragraph (4)*". However, the provision which sets out that an application must be sent to the local authority is paragraph (3). Paragraph (4) prescribes what must accompany an application. Therefore, the correct reference in paragraph A.3(5) should be to paragraph (3) rather than paragraph (4).

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

The technical scrutiny element of the draft report refers to two drafting errors, one of which is accepted.

Point 1 – Paragraph A.2(1)(a) of Schedule 1

The reporting point is noted and accepted. The government will look to correct this point by way of correction slip.

Point 2 – Paragraph A.3(5)

The cross-reference in paragraph A.3(5) was considered at the time of drafting. A conscious decision was made to include reference to paragraph (4) not paragraph (3). This is because the application being received must consist of the items listed in paragraph (4). This is consistent with Paragraph A.3(5) of Part 24 of Schedule 1 to the Town and Country Planning (General Permitted Development) Order 1995 as currently in force.

Legal Advisers
Constitutional and Legislative Affairs Committee
6 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 330 (W. 80)

TOWN AND COUNTRY PLANNING, WALES

The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO") in relation to Wales.

Article 3 of, and Schedule 2 to, the GPDO confer permitted development rights in respect of certain development. Where such rights are conferred, an application for planning permission is not required.

This Order amends Schedule 2 to the GPDO by—

— inserting Classes D and E into Part 2 (minor operations) to permit the installation of electrical outlets and upstands for recharging electric vehicles;

— inserting Part 17A (installation of devolved associated lines) to permit the installation of certain overhead electric lines;

— replacing Part 24 (development by electronic communications code operators (Wales)). Changes to this Part extend permitted development rights in relation to the height and width of ground-based masts and extend the period for the use of land for moveable electronic communications apparatus in an emergency from six to eighteen months;

— amending Part 43 (installation of non-domestic microgeneration equipment) to extend permitted development rights for non-domestic solar installations.

This Order also makes minor amendments to assist clarity.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government at: Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government website at www.gov.wales.

WELSH STATUTORY INSTRUMENTS

2019 No. 330 (W. 80)

TOWN AND COUNTRY PLANNING, WALES

The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019

Made 20 February 2019

Laid before the National Assembly for Wales 21 February 2019

Coming into force 1 April 2019

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 59, 60, 61 and 333 of the Town and Country Planning Act 1990(**1**) and now exercisable by them(**2**), make the following Order:

Title, commencement and interpretation

1.—(1) The title of this Order is the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019.

(2) This Order comes into force on 1 April 2019.

(3) In this Order, references to—

(**1**) 1990 c. 8. Section 59 was amended by section 27 of, and paragraph 3 of Schedule 4 to, and section 55 of and paragraph 5 of Schedule 7 to, the Planning (Wales) Act 2015 (anaw 4). Other amendments to sections 59 are not relevant to this Order.

(**2**) The functions of the Secretary of State were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), see the appropriate entries in Schedule 1. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(a) Schedule 2 are references to Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995(**1**); and

(b) a numbered Part are references to that Part of Schedule 2.

Amendment of the Town and Country Planning (General Permitted Development) Order 1995

2. Schedule 2 is amended as set out in articles 3 to 7.

Minor operations: recharging electric vehicles

3. In Part 2 (minor operations) after Class C insert—

"Class D

Permitted development

D. The installation, alteration or replacement within an area lawfully used for off-street parking, of an electrical outlet mounted on a wall for recharging electric vehicles.

Development not permitted

D.1 Development is not permitted by Class D if the outlet and its casing would—

(a) exceed 0.2 cubic metres;

(b) face onto and be within two metres of a highway; or

(c) be within a site designated as a scheduled monument.

Class E

Permitted development

E. The installation, alteration or replacement within an area lawfully used for off-street parking, of an upstand with an electrical outlet mounted on it for recharging electric vehicles.

Development not permitted

E.1 Development is not permitted by Class E if the upstand and the outlet would—

(a) exceed 1.6 metres in height from the level of the surface used for the parking of vehicles;

(b) be within two metres of a highway;

(**1**) S.I. 1995/418. Relevant amendments were made by S.I 2002/1878 (W. 187), S.I. 2003/2155, S.I. 2012/2318 (W. 252), S.I. 2014/2692 (W. 267) and S.I. 2018/554 (W. 95). Other amendments are not relevant to this Order.

(c) be within a site designated as a scheduled monument; or

(d) result in more than one upstand being provided for each parking space."

Development by local authorities

4. In Part 12 (development by local authorities) in Class A after paragraph A.(b) insert—

"(c) electric vehicle charging points and any associated infrastructure."

Devolved associated lines

5.—(1) In Part 17 (development by statutory undertakers) in paragraph G.1(a) before subparagraph (i) insert—

"(ai) it would consist of or include the installation or replacement of a devolved associated line within the meaning set out in paragraph A.3(1) of Part 17A;"

(2) After Part 17 insert Part 17A as set out in Schedule 1 to this Order.

Development by Electronic Communications Code Operators

6. For Part 24 (development by electronic communications code operators (Wales))(**1**) substitute Part 24 as set out in Schedule 2 to this Order.

Non-domestic solar installations

7.—(1) Part 43 (installation of non-domestic microgeneration equipment)(**2**) is amended as follows.

(2) For the heading to Part 43 substitute "Installation of non-domestic energy generation equipment".

(3) In paragraph A.1 (development not permitted) at the end of subparagraph (f) omit "or" and after subparagraph (g) insert—

"; or

(h) the solar PV or solar thermal equipment would be installed on a building within three kilometres of the perimeter of an airport or aerodrome."

(4) In paragraph A.2 (conditions)—

(a) in subparagraph (b) omit "and";

(**1**) Part 24 was substituted by S.I. 2002/1878 (W. 187) and amended by S.I. 2003/2155, S.I. 2004/945, S.I. 2014/2692 (W. 267) and S.I. 2018/554 (W. 95).

(**2**) Part 43 was inserted by S.I. 2012/2318 (W. 252).

(b) after subparagraph (b) insert—

"(ba) solar PV or solar thermal equipment must, so far as practicable, be sited so as to minimise any impacts from glint or glare; and"

(c) in subparagraph (c) for "capable of microgeneration" substitute "capable of generation".

(5) In paragraph B.1 (development not permitted) at the end of subparagraph (b)(v) omit "or" and after subparagraph (c) insert—

"; or

(d) the stand alone solar would be installed within three kilometres of the perimeter of an airport or aerodrome."

(6) In paragraph B.2 (conditions)—

(a) in subparagraph (a) omit "and";

(b) after subparagraph (a) insert—

"(aa) stand alone solar must, so far as practicable, be sited so as to minimise any impacts from glint or glare; and ";

(c) in subparagraph (b) for "capable of microgeneration" substitute "capable of generation".

(7) In paragraph C.1 (development not permitted) in subparagraph (c) omit "or" and after subparagraph (d) insert—

"; or

(e) the capacity of the ground source heat pump exceeds 45 kilowatts thermal."

(8) For paragraph D.1 (development not permitted) substitute—

"**D.1.** Development is not permitted by Class D if—

(a) the total area covered by the water source heat pump (including any pipes) exceeds 0.5 hectares; or

(b) the capacity of the water source heat pump exceeds 45 kilowatts thermal."

(9) In paragraph G (interpretation of Part 43) at the appropriate places insert—

""aerodrome" does not include any area the use of which for affording facilities for the landing and departure of aircraft has been abandoned and has not been resumed;"

""airport" has the meaning given by section 66 of the Civil Aviation Act 2012(**1**);".

(**1**) 2012 c. 19.

Hannah Blythyn
Deputy Minister for Housing and Local Government, under authority of the Minister for Housing and Local Government, one of the Welsh Ministers
20 February 2019

SCHEDULE 1 Article 5(2)

Installation of devolved associated lines

"PART 17A

Installation of devolved associated lines

Class A

Permitted Development

A. Development by statutory undertakers for the generation, transmission or supply of electricity for the purposes of their statutory undertaking consisting of—

(a) the installation of a devolved associated line with a nominal voltage not exceeding 20 kilovolts used or intended to be used for supplying a single consumer;

(b) the installation of so much of a devolved associated line as is or will be within premises in the occupation or control of the person responsible for its installation;

(c) the installation of a devolved associated line which—

(i) connects an electric line installed below ground with apparatus mounted on a pole or structure; and

(ii) is attached to the pole or structure throughout its length except where it passes through a fuse or other apparatus;

(d) the installation for a period not exceeding six months of a devolved associated line which connects two points on an existing line which are no further apart than the maximum distance so as to provide a diversion for the existing line;

(e) the installation of a devolved associated line attached to a building where the building in question crosses a road, railway or watercourse and its principal purpose is not the support of the line;

(f) the installation of a devolved associated line which replaces an existing line whether or not it is installed in the same position as the existing line in question;

(g) the installation of one or more additional poles to support an existing devolved associated line;

(h) the installation of a devolved associated line which has been, or is to be, installed in accordance with a power conferred by, or by an order made under, an Act of Parliament or an Act of the National Assembly for Wales.

Development not permitted

A.1.—(1) Development is not permitted by Class A if:

(a) in the case of any Class A(d) and (f) development, any part of the line is within a European site or a site of special scientific interest;

(b) (save as provided for in paragraph A.2(3)) in the case of any Class A(d), (f) or (g) development—

(i) the line is to be installed in a different position from the existing line; or

(ii) the height above the surface of the ground of any support for the line will exceed the height of the highest support which is to be replaced;

(iii) the installation will be in a National Park or an area of outstanding natural beauty,

and it is determined there is likely to be a significant adverse effect on the environment;

(c) in the case of any Class A(e) development, the building in question is a scheduled monument, a listed building or in a conservation area;

(d) in the case of any Class A(f) development the line has a nominal voltage greater than the nominal voltage of the existing line.

(2) For the purposes of paragraph A.1(b) it is determined that there is likely to be a significant adverse effect on the environment if—

(a) notice is given by the person proposing to carry out the installation to the local planning authority of that proposal; and

(b) the authority, within six weeks of receiving that notice—

(i) determines that if the installation were completed in accordance with the proposal it would in the opinion of that authority be likely to have a significant adverse effect on the environment; and

(ii) notifies the person by whom the notice was given and the Welsh Ministers of that determination.

Conditions

A.2.—(1) Development is permitted in the case of any Class A (f) and (g) development subject to the following conditions—

(a) that any conditions applicable to the existing line contained in—

(i) a consent granted under section 37(1) of the Electricity Act 1989(**1**) (consent required for overhead lines) or section 10(b) of the Schedule to the Electric Lighting (Clauses) Act 1899(**2**); or

(ii) an order granting development consent under the Planning Act 2008(**3**), or

(iii) a planning permission relating to the height, design or position of the existing line which are capable of being applied to the installation;

are complied with;

(b) that the height above the surface of the ground of any support for the line does not exceed the height of the highest existing support or support which is being replaced by more than 10 per cent;

(c) that where the line is installed in a different position from the existing line the distance between any small support and the existing line does not exceed 30 metres and the distance between any

(**1**) 1989 c. 29. Section 37(1) was amended by paragraph 33 of Schedule 2 to the Planning Act 2008 (c. 29) and by section 42 of the Wales Act 2017 (c. 4).

(**2**) 1899 c. 19. The Act was repealed by the Electricity Act 1989.

(**3**) 2008 c. 29. See section 31 for the definition of "development consent".

other support and the existing line does not exceed 60 metres; and

(d) that where the line is installed in a different position from the existing line, the existing line is removed within twelve months from the date on which the installation of the line which replaces it is completed.

(2) Development is permitted in the case of any Class A(d) development subject to the conditions that—

(a) at the end of a period of six months from the date on which the installation is completed or on the ending of the diversion (whichever is the sooner) the devolved associated line is removed; and

(b) the land on which any operations have been carried out is restored as soon as reasonably practicable to its condition before the development took place.

(3) Where it is necessary to make emergency repairs to an existing devolved associated line in a National Park or an area of outstanding natural beauty—

(a) the limitation in paragraph A.1.(1)(b) does not apply; and

(b) development is permitted subject to the condition that the person making those emergency repairs must notify the local planning authority as soon as practicable that those repairs have been, are being or will be made.

Interpretation of Class A

A.3.—(1) For the purposes of this Part—

"devolved associated line" means an electric line which—

(a) is above ground;

(b) has a nominal voltage of 132 kilovolts or less, and

(c) is associated with the construction or extension of a devolved Welsh generating station granted planning permission or consented to on or after 1 April 2019;

"devolved Welsh generating station" has the same meaning as in section 37(2B) of the Electricity Act 1989(**1**);

(**1**) Section 37(2B) was inserted by section 42(3) of the Wales Act 2017 (c. 4).

"electric line" has the meaning assigned to that term by section 64(1) of the Electricity Act 1989(**1**) (interpretation etc. of Part 1);

"European site" has the same meaning as in regulation 8 of the Conservation of Habitats and Species Regulations 2017(**2**));

"an existing line" means an electric line which—

(a) has been installed or is kept installed above ground in accordance with a consent granted under section 37(1) of the Electricity Act 1989(**3**) or an order granting development consent under the Planning Act 2008 or planning permission; or

(b) has been installed above ground and is an electric line to which section 37(1) of the Electricity Act 1989 does not apply by virtue of paragraph 5(4) or (5) of Schedule 17 to that Act;

"small support" means a support for an electric line which does not exceed 10 metres in height.

(2) For the purposes of Class A(d) development "maximum distance" means—

(a) in relation to a devolved associated line which has a nominal voltage less than 66 kilovolts, 500 metres; and

(b) in relation to any other devolved associated line, 850 metres.

(3) For the purposes of paragraph A.2(1)(c), any reference to the distance between a support and an existing line is a reference to the shortest distance between the centre of the base of that support and an imaginary line through the centre of the base of each support for the existing line."

(**1**) There are amendments to section 64(1) not relevant to this Order.
(**2**) S.I. 2017/1012.
(**3**) Section 37(1) was amended by paragraph 33 of, and Schedule 2 to, the Planning Act 2008 (c. 29).

SCHEDULE 2 Article 6

Substitution of Part 24

"Part 24

DEVELOPMENT BY ELECTRONIC COMMUNICATIONS CODE OPERATORS (WALES)

Class A

Permitted Development

A. Development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of—

(a) the installation, alteration or replacement of any electronic communications apparatus,

(b) the use of land in an emergency for a period not exceeding eighteen months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use, or

(c) development ancillary to radio equipment housing.

Development not permitted

A.1. Development is not permitted by Class A(a) if—

(a) in the case of the installation of ground-based apparatus (other than a mast), the apparatus, excluding any antenna, would exceed a height of 15 metres above ground level(**1**);

(b) in the case of the alteration or replacement of ground-based apparatus (other than a mast), the apparatus excluding any antenna, would when altered or replaced exceed—

(i) the height of the existing apparatus, or

(**1**) For the height of apparatus and ground level, see Article 1(3).

(ii) a height of 15 metres above ground level,

whichever is the greater;

(c) in the case of the installation of a ground-based mast, the mast, excluding any antenna, would exceed a height(**1**) of—

(i) 20 metres above ground level where the mast is on protected land; or

(ii) 25 metres above ground level where the mast is on unprotected land;

(d) in the case of the alteration or replacement of a ground-based mast on protected land, the mast, excluding any antenna, would when altered or replaced exceed—

(i) the height of the existing mast, or

(ii) a height of 20 metres above ground level,

whichever is the greater;

(e) in the case of the alteration or replacement of a ground-based mast on unprotected land, the mast, excluding any antenna, would when altered or replaced exceed—

(i) the height of the existing mast, or

(ii) a height of 25 metres above ground level,

whichever is the greater;

(f) in the case of the alteration or replacement of a ground-based mast—

(i) where the mast is on article 1(5) land or on unprotected land, the mast would when altered or replaced exceed its original width(**2**) at any given height by more than one metre or one third whichever is the greater;

(ii) where the mast is on land which is or is within a site of special scientific interest, the mast would when altered or replaced exceed its original width at any given height;

(**1**) For the height of a mast, see paragraph A.4(2)(a) below.
(**2**) For the width of a mast, see paragraph A.4(2)(b) below.

(g) in the case of the installation, alteration or replacement of apparatus on a building or other structure—

(i) the height of the apparatus (taken by itself) would exceed—

(aa) 15 metres, where it is installed, or is to be installed, on a building or other structure which is 30 metres or more in height; or

(bb) 10 metres in any other case;

(ii) the highest part of the apparatus when installed, altered or replaced would exceed the height of the highest part of the building or structure by more than—

(aa) 10 metres, in the case of a building or structure which is 30 metres or more in height;

(bb) 8 metres, in the case of a building or structure which is more than 15 metres but less than 30 metres in height; or

(cc) 6 metres in any other case;

(h) in the case of the installation, alteration or replacement of apparatus (other than an antenna) on a mast, the height of the mast would, when the apparatus was installed, altered or replaced, exceed any relevant height limit specified in respect of apparatus in paragraphs (c) to (g) and for the purposes of applying the limit specified in paragraph (g)(i), the words "(taken by itself)" are to be omitted;

(i) in the case of the installation, alteration or replacement of any apparatus other than—

(i) a mast,

(ii) an antenna,

(iii) a public call box,

(iv) any apparatus which does not project above the level of the surface of the ground, or

(v) radio equipment housing,

the ground or base area of the structure would exceed 1.5 square metres;

(j) in the case of the installation, alteration or replacement of an antenna on a building or structure (other than a

mast) which is less than 15 metres in height, on a mast located on such a building or structure, or, where the antenna is to be located below a height of 15 metres above ground level, on a building or structure (other than a mast) which is 15 metres or more in height—

(i) in the case of antennas other than small cell antennas, the antenna is to be located on a wall or roof slope facing a highway which is within 20 metres of the building or structure on which the antenna is to be located;

(ii) in the case of dish antennas, the size of any dish would exceed 0.9 metres or the aggregate size of all of the dishes on the building, structure or mast would exceed 4.5 metres, when measured in any dimension;

(iii) in the case of antennas other than dish antennas, the development (other than the installation, alteration or replacement of one small antenna or a maximum of two small cell antennas) would result in the presence on the building or structure of—

(aa) more than three antenna systems; or

(bb) any antenna system operated by more than three electronic communications code operators; or

(iv) the building or structure is a listed building or a scheduled monument;

(k) in the case of the installation, alteration or replacement of an antenna on a building or structure (other than a mast) which is 15 metres or more in height, or on a mast located on such a building or structure, where the antenna is located at a height of 15 metres or above, measured from ground level—

(i) in the case of dish antennas, the size of any dish would exceed 1.3 metres or the aggregate size of all of the dishes on the building, structure or mast would exceed 10 metres, when measured in any dimension;

(ii) in the case of antennas other than dish antennas, the development (other than the installation, alteration or replacement of a maximum of two small antennas or two small cell antennas) would result in the presence on the building or structure of—

(aa) more than five antenna systems; or

(bb) any antenna system operated by more than three electronic communications code operators; or

(iii) the building or structure is a listed building or a scheduled monument;

(l) in the case of development on any protected land it would consist of—

(i) the installation or alteration of an antenna or of any apparatus which includes or is intended for the support of such an antenna; or

(ii) the replacement of such an antenna or such apparatus by an antenna or apparatus which differs from that which is being replaced,

unless the development is carried out in an emergency or is development described in the introductory words to any of paragraphs (l), (p), (q), or (s) and which is allowed by the respective sub-paragraphs which follow those introductory words;

(m) in the case of the installation of an additional antenna on existing electronic communications apparatus on a building or structure (including a mast) on any protected land—

(i) in the case of dish antennas, the size of any additional dishes would exceed 0.6 metres, and the number of additional dishes on the building or structure would exceed three; or

(ii) in the case of antennas other than dish antennas, any additional antennas would exceed three metres in height, and the number of additional antennas on the building or structure would exceed three;

(n) it would consist of the installation, alteration or replacement of system

apparatus within the meaning of section 8(6) of the Road Traffic (Driver Licensing and Information Systems) Act 1989 (definitions of driver information systems etc.)(**1**);

(o) in the case of the installation of a mast, on a building or structure which is less than 15 metres in height, such a mast would be within 20 metres of a highway;

(p) in the case of the installation, alteration or replacement of radio equipment housing—

(i) the development is not ancillary to the use of any other electronic communications apparatus;

(ii) the cumulative volume of such development would exceed 90 cubic metres or, if located on the roof of a building, the cumulative volume of such development would exceed 30 cubic metres; or

(iii) on any protected land, any single development would exceed 2.5 cubic metres, unless the development is carried out in an emergency;

(q) in the case of the installation, alteration or replacement on a dwellinghouse or within the curtilage of a dwellinghouse of any electronic communications apparatus, that apparatus—

(i) is not a small antenna;

(ii) being a small antenna, would result in the presence on that dwellinghouse or within the curtilage of that dwellinghouse of more than one such antenna; or

(iii) being a small antenna, is to be located on a roof or on a chimney so that the highest part of the antenna would exceed in height the highest part of that roof or chimney respectively;

(r) in the case of the installation, alteration or replacement on any protected land of a small antenna on a dwellinghouse or within the curtilage of a dwellinghouse, the antenna is to be located—

(i) on a chimney;

(**1**) 1989 c. 22.

(ii) on a building which exceeds 15 metres in height; or

(iii) on a wall or roof slope which fronts a highway;

(s) in the case of the installation, alteration or replacement of a small antenna on a building which is not a dwellinghouse or within the curtilage of a dwellinghouse—

(i) the building is on protected land;

(ii) the building is less than 15 metres in height, and the development would result in the presence on that building of more than one such antenna; or

(iii) the building is 15 metres or more in height, and the development would result in the presence on that building of more than two such antennas;

(t) in the case of the installation, alteration or replacement of a small cell antenna on a building or structure:

(i) the building or structure is a dwellinghouse or within the curtilage of a dwellinghouse;

(ii) the building or structure is on any land which is, or is within, a site of special scientific interest; or

(iii) the development would result in the presence on the building or structure of more than two such antennas.

Conditions

A.2—(1) Class A(a) and Class A(c) development is permitted subject to the condition that any antenna or supporting apparatus, radio equipment housing or development ancillary to radio equipment housing installed, altered or replaced on a building in accordance with that permission must, so far as is practicable, be sited so as to minimise its effect on the external appearance of the building.

(2) Class A(a) and Class A(c) development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission must be removed from the land, building or structure on which it is situated—

(a) if such development was carried out in an emergency on any protected land, at the expiry of the relevant period, or

(b) in any other case, as soon as reasonably practicable after it is no longer required for any electronic communications purposes,

and such land, building or structure must be restored to its condition before the development took place or to any other condition as may be agreed in writing between the local planning authority and the developer.

(3) Class A(b) development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission must be removed from the land at the expiry of the relevant period and the land restored to its condition before the development took place.

(4) Except in relation to development described in paragraph (5) and subject to paragraph (7), class A development on—

(a) protected land, or

(b) unprotected land consisting of the installation, alteration or replacement of—

(i) a mast;

(ii) an antenna on a building or structure (other than a mast) where the antenna (including any supporting structure) would exceed the height of the building or structure at the point where it is installed or to be installed by six metres or more;

(iii) a public call box;

(iv) radio equipment housing, where the volume of any single development is in excess of 2.5 cubic metres,

is permitted subject, except in case of emergency, to the conditions set out in A.3.

(5) Class A development on any article 1(5) land, which consists of the installation, alteration or replacement of a telegraph pole, cabinet or line, in connection with the provision of fixed-line broadband, is permitted, subject to the conditions set out in paragraph (6).

(6) The conditions are—

(a) the developer must give one month's notice, in writing, to the relevant local planning authority and to the Natural

Resources Body for Wales where the development, or any part of it, is in—

(i) a National Park, or

(ii) an area of outstanding natural beauty;

(a) the notice to be given under paragraph (a) must state the developer's intention to install electronic communications apparatus, describe the apparatus and identify the location where it is proposed to install it;

(b) any cabinet must be:

(i) green;

(ii) black (except matt black); or

(iii) a colour which has the written approval of the local planning authority prior to the commencement of the development;

(c) any telegraph pole must have the same appearance and be made of the same material as the nearest existing telegraph pole to it which has planning permission, unless an alternative appearance or material has been approved in writing by the local planning authority prior to the commencement of the development.

(7) Paragraph (4) does not apply to development consisting of the alteration or replacement of a mast—

(a) on any protected land which excluding any antenna would not, when altered or replaced, exceed the greater of the height of the existing mast and 15 metres above ground level;

(b) on unprotected land which excluding any antenna would not, when altered or replaced, exceed the greater of the height of the existing mast and 20 metres above ground level.

Prior approval

A.3—(1)The developer must give notice of the proposed development to any person (other than the developer) who is an owner of the land to which the development relates, or a tenant, before making the application required by paragraph (3)—

(a) by serving a developer's notice on every such person whose name and address is known to the developer; and

(b) where the developer has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by local advertisement.

(2) Where the proposed development consists of the installation of a mast within three kilometres of the perimeter of an aerodrome, the developer must notify the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as appropriate, before making the application required by paragraph (3).

(3) Before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting and appearance of the development.

(4) The application must be accompanied by–

(a) a written description of the proposed development and a plan indicating its proposed location together with any fee required to be paid;

(b) the developer's contact address, and the developer's email address if the developer has one; and

(c) if the development involves the installation of one or more antennas, unless they are all small cell antennas, a written declaration that the equipment and installation to which the application relates is so designed that it will, when installed, operate, having regard to its location and the manner in which it has been installed, in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-ionising Radiation Protection, as expressed in the EU Council recommendation of 12 July 1999(**1**) on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz); and

(d) where paragraph (1) applies, by evidence that the requirements of paragraph (1) have been satisfied; and

(e) where paragraph (2) applies, by evidence that the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as

(**1**) 1999/519/EC.

the case may be, has been notified of the proposal.

(5) Subject to paragraphs (7)(c) and (d), upon receipt of the application under paragraph (4) the local planning authority must—

(a) for development which, in their opinion, falls within a category set out in the table of schedule 4 to the Procedure Order(**1**), consult the authority or person mentioned in relation to that category, except where–

(i) the local planning authority are the authority so mentioned; or

(ii) the authority or person so mentioned has advised the local planning authority that they do not wish to be consulted,

and give the consultees at least 14 days within which to comment;

(b) in the case of development which does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated or which would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981 (public rights of way)(**2**) applies, give notice of the proposed development, in the appropriate form set out in Schedule 3 to the Procedure Order(**3**)—

(i) by site display in at least one place on or near the land to which the application relates for not less than 21 days and

(ii) by local advertisement;

(c) in the case of development which does not fall within paragraph (b) but which involves development carried out on a site having an area of one hectare or more, give notice of the proposed development, in the appropriate form set out in Schedule 3 to the Procedure Order—

(i) by site display in least one place on or near the land to which the application relates for not less than 21 days, or

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(**1**) Schedule 4 was substituted by S.I. 2016/59 (W. 29).

(**2**) 1981 c. 69. There are amendments to Part 3 not relevant to this Order.

(**3**) Schedule 3 was amended by S.I. 2016/59 (W. 29) and S.I. 2017/567 (W. 136).

(ii) by serving notice on any adjoining owner or occupier, and

(iii) by local advertisement;

(d) in the case of development which does not fall within (b) or (c), give notice of the proposed development, in the appropriate form set out in Schedule 3 to the Procedure Order—

(i) by site display in at least one place on or near the land to which the application relates for not less than 21 days, or

(ii) by serving the notice on any adjoining owner or occupier.

(6) The local planning authority must take into account any representations made to them as a result of consultations or notices given under A.3(5), when determining the application made under paragraph (3).

(7) The development must not be begun before the occurrence of one of the following—

(a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;

(b) where the local planning authority gives the applicant written notice that such prior approval is required, the giving of that approval to the applicant, in writing, within a period of 56 days beginning with the date on which they received the application;

(c) where the local planning authority gives the applicant written notice that such prior approval is required, the expiry of a period of 56 days beginning with the date on which the authority received the application without the authority notifying the applicant, in writing, that such approval is given or refused;

(d) the expiry of a period of 56 days beginning with the date on which the local planning authority received the application without the authority notifying the applicant, in writing, of their determination as to whether such prior approval is required.

(8) The development must, except to the extent that the local planning authority otherwise agree in writing, be carried out–

(a) where prior approval has been given as mentioned in paragraph (7)(b) in accordance with the details approved;

(b) in any other case, in accordance with the details submitted with the application.

(9) The agreement in writing referred to in paragraph (8) requires no special form of writing, and in particular there is no requirement on the developer to submit a new application for prior approval in the case of minor amendments to the details submitted with the application for prior approval.

(10) The development must be begun—

(a) where prior approval has been given as mentioned in paragraph (7)(b), not later than the expiration of five years beginning with the date on which the approval was given;

(b) in any other case, not later than the expiration of five years beginning with the date on which the local planning authority were given the information referred to in paragraph (4).

(11) In a case of emergency, development is permitted by Class A subject to the condition that the operator must give written notice to the local planning authority of such development as soon as possible after the emergency begins.

Interpretation of Class A

A.4.—(1) For the purposes of Class A—

"aerodrome operator" means the person for the time being having the management of an aerodrome or, in relation to a particular aerodrome, the management of that aerodrome;

"antenna system" means a set of antennas installed on a building or structure and operated in accordance with the electronic communications code;

"development ancillary to radio equipment housing" means the installation, alteration or replacement of structures, equipment or means of access which are ancillary to and reasonably required for the purposes of the radio equipment housing, and except on any land which is, or is within, a site of special scientific interest includes—

(a) security equipment;

(b) perimeter walls and fences; and

(c) handrails, steps and ramps;

"developer's notice" means a notice signed and dated by or on behalf of the developer and containing—

(a) the name of the developer;

(b) the address or location of the proposed development;

(c) a description of the proposed development (including its siting and appearance and the height of any mast);

(d) a statement that the developer will apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting and appearance of the development;

(e) the name and address of the local planning authority to whom the application will be made;

(f) a statement that the application must be available for public inspection at the offices of the local planning authority during usual office hours;

(g) a statement that any person who wishes to make representations about the siting and appearance of the proposed development may do so in writing to the local planning authority;

(h) the date by which any such representations should be received by the local planning authority, being a date not less than 14 days from the date of the notice; and

(i) the address to which such representations should be made.

"electronic communications apparatus", "electronic communications code", "electronic communications network" and "electronic communications service" have the same meaning as in the Communications Act 2003(**1**);

"existing electronic communications apparatus" means electronic communications apparatus which is already sending or receiving electronic communications;"

"fixed-line broadband" means a service or connection (commonly referred to as being 'always on'), via a fixed-line network,

(**1**) 2003 c. 21. See sections 32, 151 and 405 and paragraph 5 of Schedule 3A to that Act.

providing a bandwidth greater than narrowband;

"land controlled by the operator" means land occupied by the operator in right of a freehold interest or a leasehold interest under a lease granted for a term of not less than 10 years;

"local advertisement" means by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated;

"mast" means a radio mast or a radio tower;

"narrowband" means a service or connection providing data speeds up to 128 k bit/s;

"owner" means any person who is the estate owner in respect of the fee simple, or who is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired;

"Procedure Order" means the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(**1**);

"protected land" means any land which is article 1(5) land or land which is, or is within, a site of special scientific interest;

"relevant period" means a period which expires–

(a) six months from the commencement of the installation, alteration or replacement of any apparatus or structure permitted by Class A(a) or Class A(c);

(b) eighteen months from the commencement of the use permitted by Class A(b);or

(c) when the need for such apparatus, structure or use ceases,

whichever occurs first;

"small antenna" means an antenna which–

(a) is for use in connection with a telephone system operating on a point to fixed multi-point basis;

(b) does not exceed 50 centimetres in any linear measurement; and

(**1**) S.I. 2012/801 (W. 110). Relevant amending instruments are S.I. 2016/59 (W. 29) and S.I. 2017/567 (W. 136).

(c) does not, in two-dimensional profile, have an area exceeding 1,591 square centimetres,

and any calculation for the purposes of (b) and (c) must exclude any feed element, reinforcing rim mountings and brackets;

"small cell antenna" means an antenna which—

(a) operates on a point to multi-point or area basis in connection with an electronic communications service;

(b) may be variously referred to as a femtocell, picocell, metrocell or microcell antenna;

(c) does not, in any two dimensional measurement, have a surface area exceeding 5,000 square centimetres; and

(d) does not have a volume exceeding 50,000 cubic centimetres,

and any calculation for the purposes of (c) and (d) includes any power supply unit or casing, but excludes any mounting, fixing, bracket or other support structure;

"tenant" means the tenant of an agricultural holding any part of which is comprised in the land to which the application relates;

"unprotected land" means any land which is not protected land.

(2) For the purposes of this Part—

(a) the height of a mast is calculated by—

(i) adding together the height, measured at its highest point, of the mast or apparatus of—

(aa) the mast;

(bb) any apparatus attached to the mast; and

(cc) any plinth or other structure required for the purpose of supporting the mast; and

(ii) deducting from that sum the height, also measured at its highest point, of any antenna attached to the mast to the extent that it protrudes above the highest point of the mast;

(b) the width of a ground-based mast is to be calculated by adding together the width of—

(i) the mast; and

(ii) any apparatus attached to the mast (other than an antenna).

Extent of Permission

A.5 Where Class A permits the installation, alteration or replacement of any electronic communications apparatus, the permission extends to any—

(a) casing or covering;

(b) mounting, fixing, bracket or other support structure;

(c) perimeter walls or fences;

(d) handrails, steps or ramps; or

(e) security equipment;

reasonably required for the purposes of the electronic communications apparatus.

A.6 Nothing in paragraph A.5 extends the permission in Class A to include the installation, alteration or replacement of anything mentioned in paragraph A.5(a) to (e) on any land which is, or is within, a site of special scientific interest if the inclusion of such an item would not have been permitted by Class A, as read without reference to paragraph A.5."

Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019.

I am satisfied the benefits justify the likely costs.

Hannah Blythyn
Deputy Minister for Housing and Local Government
21 February 2019

PART 1

1. Description

1.1 The Town and Country Planning (General Permitted Development) Order 1995 (the "GPDO"), as amended, allows some minor development to be undertaken, within certain parameters, without the need to submit a planning application. This is known as "permitted development".

1.2 The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019 ("the Amendment Order") amends Schedule 2 to the GPDO by:

- inserting Classes D and E into Part 2 (minor operations) to permit the installation of electrical outlets and upstands for recharging electric vehicles;
- inserting Part 17A (installation of devolved associated lines) to permit the installation of certain overhead electric lines;
- replacing Part 24 (development by electronic communications code operators (Wales)). Changes to this Part extend permitted development rights in relation to the height and width of ground-based masts and extend the period for the use of land for moveable electronic communications apparatus in an emergency from six to eighteen months. The Amendment Order also makes amendments in relation to the construction, installation or replacement of certain apparatus for fixed line broadband services on article 1(5) land. Prior approval for such development is not required if certain conditions are satisfied. The condition that work be completed by 30 May 2019 is removed.
- amending Part 43 (installation of non-domestic microgeneration equipment). Amendments to this Part extend permitted development rights for non-domestic solar installations, provide that development is not permitted if the solar PV, solar thermal equipment or stand alone solar would be installed within three kilometres of the perimeter of an airport or aerodrome and amend conditions in paragraph A.2 and B.2.

1.3 The Amendment Order also makes minor amendments to assist clarity.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 None.

3. Legislative background

3.1 The powers to make the Amendment Order are in sections 59, 60, 61 and 333 of the Town and Country Planning Act 1990. These sections give the Secretary of State power to grant (or to enable local planning authorities to grant) planning permission for categories of development specified in a development order. The GPDO is made under these powers. The functions of the Secretary of State were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).These powers are thus now exercisable by the Welsh Ministers.

3.2 Section 333(5B) of the Town and Country Planning Act 1990 provides that the procedure for a statutory instrument which contains a development order is a negative resolution procedure.

4. Purpose and intended effect of the legislation

Electric Vehicle Charging Points

4.1 Charging points that involve the installation of equipment (such as an upstand) which is located outside a building constitutes 'development' under the Town and Country Planning Act 1990 (the 1990 Act), whether located within public or private open-air car parks, within the front garden of a dwellinghouse or as part of an on-street parking bay. Additionally, an external plug installed on the face of an existing wall (e.g. of a dwellinghouse) may be deemed development under the 1990 Act if it is considered to materially affect the external appearance of the building.

4.2 There is continuing growth in the numbers of electric vehicles (EV) and alternative fuel vehicles (ALV) being registered in the UK. As the technology develops, it is anticipated that demand for EVs will continue to grow. Wide scale take-up of EV will require a comprehensive network of EV charging points to reassure drivers that they will be able to recharge their vehicles whenever and wherever they need to.

4.3 Electric and plug-in hybrid vehicles potentially offer significant environmental benefits compared with existing internal combustion engine vehicles, and greatly improved fuel efficiency. Accordingly, the Government is promoting a switch towards EV.

4.4 The purpose of the provisions in the Amendment Order in relation to Part 2 of Schedule 2 to the GPDO is to grant permitted development rights for the installation, alteration and replacement of electrical outlets and upstands for recharging of EVS, subject to conditions relating to amenity and highway safety, to expedite the creation of a Wales-wide network of

EV charging infrastructure - at homes, workplaces and key destinations, such as supermarkets, retail and commercial centres and leisure.

4.5 These rights will be subject to certain constraints, such as maximum size and siting, designed to minimise impacts on neighbours and the wider environment.

4.6 Amendments made by the Amendment Order also clarify that on-street EV charging points and associated infrastructure can be installed by local authorities under their permitted development rights to provide facilities required in connection with the operation of any public service administered by them.

Devolved associated lines

4.7 Consents for overhead electric lines are currently granted under the Electricity Act 1989 (up to 132KV) or the Planning Act 2008 (132KV and above). These are both consents granted by the Secretary of State. On 1 April 2019, the Wales Act 2017 places consenting for electric lines (subject to a limit of 132KV nominal voltage) the purpose of which is to facilitate the connection to the electricity national grid of generating stations consented by Welsh Ministers ("devolved associated lines") into the 1990 Act to be consented by way of a planning permission. Further statutory instruments are being laid which require the planning permission to be obtained from the Welsh Ministers as an application for a Development of National Significance ("DNS").

4.8 Section 37(2) of the Electricity Act 1989, the Overhead Lines (Exemption) Regulations 1992 and the Overhead Lines (Exemption) (England and Wales) Regulations 2009 provide for exemptions from the requirement for the consent of the Secretary of State under section 37 of the Electricity Act 1989 to the installation or keeping installed of an electric line above ground.. These exemptions have the effect of providing powers to undertake minor works. Devolved associated lines will now require planning permission instead of a section 37 consent. In the interests of continuity for developers and to preclude relatively minor works from requiring a DNS application, the purpose of provisions in the Amendment Order in relation to devolved associated lines is to carry forward those existing exemptions as permitted development and thus, not requiring an application for planning permission.

Telecommunication

4.9 The delivery of a fast reliable mobile telecommunications and broadband network to all parts of Wales is essential to achieve Wales's digital connectivity goals, including areas not currently served by the market. In October 2017 the Welsh Government also published the Mobile Action Plan for Wales. The Plan identifies a number of actions required to achieve national objectives for digital connectivity, including the review of

permitted development rights, and revision of telecoms policy in Planning Policy Wales.

4.10 The Planning System has an important role to play in supporting and enhancing digital connectivity, through national and local policy and through permitted development rights.

4.11 Permitted development rights for mobile telecommunications in Wales are set out in Part 24 of Schedule 2 to the GDPO. The Welsh Government's review of permitted development rights provided an opportunity to consider if the current regulations applying to mobile telecommunications are fit for purpose and able to deliver the objectives set out in national strategy.

4.12 The Amendment Order replaces Part 24 in its entirety. The key changes in relation to telecommunication masts are:

- In the case of the installation of a new ground based mast in a protected area, an increase of 5 metres to the maximum height permitted (15 metres increased 20 metres.
- In the case of the installation of a ground based mast in an unprotected area, an increase of 10 metres to the maximum height permitted (15 metres increased to 25 metres).
- In the case of the alteration and replacement of a ground based mast in a protected area, an increase of 5 metres to the maximum height permitted (15 metres increased to 20 metres).
- In the case of the alteration and replacement of a ground based mast in an unprotected area, an increase of 5 metres to the maximum height permitted (20 metres increased to 25 metres).
- An increase in the width of existing ground based masts of 1 metre, or one third whichever is the greater, at any given height. Where a mast is altered or replaced in an SSSI, the mast must not exceed its previous width.
- Extension of the period for the use of land for moveable electronic communications apparatus in an emergency from six to eighteen months
- Removal of the requirement to seek prior approval for the alteration or replacement of a mast when the altered/replacement mast does not exceed the height of the existing mast, or the maximum heights permitted by the GPDO prior to amendment by the Amendment Order.

4.13 The purpose of these provisions is to increase the flexibility of the permitted development rights regime for electronics code operators to enable the further roll-out of mobile coverage across Wales, particularly in those areas with limited or no coverage currently.

Fixed-Line Broadband

4.14 The Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2014 amended Part 24 of Schedule 2 the GPDO to provide that, in relation to article 1(5) land, the construction, installation or replacement of telegraph poles, cabinets or lines for fixed-

line broadband services would not require prior approval under paragraph A.3. In order to rely on the amendment to the permitted development rights, development had to be completed before 30 May 2018 and certain other conditions had to be complied with. Article 1(5) land refers to land within a National Park, an Area of Outstanding Natural Beauty and an area designated as a Conservation Area.

4.15 The above amendment was made to support the Programme for Government commitment to deliver fast reliable broadband to those parts of Wales not currently served by the market.

4.16 The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2018 extended the date by which development had to be completed to 30 May 2019.

4.17 The Welsh Government is continuing to work with operators to further extend coverage and build upon the success of Superfast Cymru. Broadband providers are continuing to deploy commercially across Wales and the need for street cabinets and other associated apparatus will continue to be essential to help deliver the Welsh Government's objectives. The delivery of fast reliable broadband to those parts of Wales not currently served by the market remains a nationally important program and a government commitment.

4.18 The provisions in the Amendment Order in relation fixed-line broadband services remove the condition that work has to be completed before 30 May 2019 and therefore removing the requirement for prior approval of the Local Planning Authority for the construction, installation or replacement of telegraph poles, cabinets or lines for fixed-line broadband services on article 1(5) land providing other conditions are met.

4.19 The purpose of this provision is to maintain the expedited procedure to assist the telecommunication industry with the roll-out of superfast broadband.

Non-domestic Microgeneration

4.20 The Welsh Government is committed to increasing the amount of energy we produce from renewable sources and has introduced stretching targets for renewable energy and committed, through legislation, to radically decarbonise by 80% by 2050. It is important therefore that the planning system both proactively plans for new renewable and low carbon energy developments for the long term, but is also not perceived as a barrier to smaller scale developments which have no or minimal impact on their surroundings. By operating in this way the planning system can maximise its contribution to ensure that Wales' potential to generate renewable and low carbon energy is realised.

4.21 Permitted development rights for non-domestic solar PV and solar thermal were introduced in the Town and Country Planning (General Permitted

Development) (Amendment) (Wales) (No.2) Order 2012 by the insertion of Part 43 into Schedule 2 of the GPDO.

4.22 The purpose of the amendments to help facilitate an increase in the take-up of the installation of solar panels on non domestic properties by reducing costs and other planning barriers to business owners who are considering installing solar panels to reduce their own business cots.

4.23 The changes made by the Amendment Order in relation to Class A and Class B of Part 43 of Schedule 2 remove the energy output threshold (50kw electrical and 45kw thermal) for solar installations.

4.24 In addition, in the case of both Class A (the installation, alteration or replacement of solar PV or solar thermal equipment on a building other than a dwellinghouse or a block of flats) and Class B (the installation, alteration or replacement of stand alone solar within the curtilage of a building other than a dwellinghouse or a block of flats) development, the Amendment Order introduces a new limitation excluding development within three kilometres of the perimeter of an airport or aerodrome. Interpretation of what constitutes an “airport” or “aerodrome” are also provided. The purpose of this limitation is ensure the impacts of larger solar arrays permitted by the Amendment Order are full considered by the LPA through a planning application to maintain the safe operations of airports and aerodromes.

4.25 The Amendment Order also introduces a new condition that also applies to both Class A and Class B development to ensure the possible affects of glint and glare are minimised (flash of light and continuous reflection of sunlight) when locating solar panels. Whilst solar panels are designed to absorb as much light as possible and in most circumstances have low reflective properties, because the new proposals allow potentially large solar installations, the condition encourages a precautionary approach to any potential impacts from sunlight.

4.26 The conditions inserted by the Amendment Order for Class C (the installation, alteration or replacement of a ground source heat pump within the curtilage of a building other than a dwellinghouse or a block of flats.) and Class D (the installation, alteration or replacement of a water source heat pump within the curtilage of a building other than a dwellinghouse or a block of flats) are consequential amendments required to maintain the existing policy position as a result of removing the definition of ‘microgeneration’ from Part 43. There is no policy change in respect of these provisions.

5. Consultation

5.1 A consultation ran from 31 May 2018 to 28 September 2018 on a wide ranging set of proposals regarding to the consolidation and amendment of the Town and Country Planning (Use Classes) Order 1987 and the GPDO. A total of 148 responses were received.

5.2 The Amending Order takes forward key ministerial priorities in advance of a consolidating order which will encompass the remaining proposals.

5.3 There was broad agreement from stakeholders to all of the proposals in the consultation which form part of this Order. A summary of the consultation responses is available at https://beta.gov.wales/subordinate-legislation-consolidation-and-review.

5.4 Furthermore, a 12 week consultation ran from 30 April to 23 July 2018 on changes to the consenting of infrastructure in Wales. The consultation was drawn to the attention of a wide range of stakeholders including LPAs, generating station operators and their representatives, businesses, planning consultants, interest groups and other public sector agencies. A total of 47 responses were received.

5.5 Question 3 asked whether respondents agreed with our proposals for overhead electric lines, which included the transfer of exemptions from the requirement for consent from the Electricity Act 1989 to the Town and Country Planning Act 1990. The vast majority of respondents agreed with this approach, and this statutory instrument implements this proposal.

5.6 A summary of the consultation responses is available at: https://beta.gov.wales/changes-approval-infrastructure-development.

PART 2 – REGULATORY IMPACT ASSESSMENT

Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019

1. Minor operations: recharging vehicles

Options

1.1 The following options are considered:

Option 1: Do nothing – Planning permission will continue to be required for vehicle charging infrastructure

Option 2: - Make the legislation - Grant permitted development rights for the installation of electric vehicle charging points, including clarification that local authorities may install electric vehicle charging points as permitted development.

Option 2 is the favoured option as it will result in a more enabling regime for the installation of electric vehicle charging infrastructure.

Cost and Benefits Analysis

1.2 The sectors most likely to be affected by the proposals include:

- Businesses wishing to install apparatus to provide charging facilities at workplaces, retail/leisure facilities etc.
- LPAs who determine applications for planning permission.
- The general public who want to install apparatus to provide charging facilities at home.

1.3 The following cost and benefit analysis has been undertaken for each of the above sectors:

Cost Analysis for Option 1: Do nothing

<u>Business</u>

1.4 The requirement for planning permission for the installation of vehicle charging infrastructure will continue, resulting in additional cost to businesses who wish to provide charging facilities for electric/plug-in hybrid vehicles. The planning fee for a planning application is currently £190.00. There will be additional associated costs for the preparation of the necessary supporting information, such as plans. A benchmarking

study undertaken in England[1] estimated the total cost of submitting a householder development application varied from £150 to £2,900, with an average cost of £1,187. A number of variables had an impact on these costs, including the use of an agent, the use of existing plans submitted as part of previous schemes, and the savings incurred by submitting applications via the Planning Portal (this limited printing costs). The Welsh Government believe the costs identified in this study are representative of a) the costs likely to be incurred in Wales and b) the costs likely to be incurred by businesses for an application for this scale of development.

1.5 The requirement for planning permission may also deter some business from installing charging points, to the detriment of decarbonising the transport network in Wales and combating climate change.

Local Planning Authorities

1.6 LPAs will continue to validate, process and determine applications for planning permission for vehicle charging infrastructure. Each application will need to be publicised and a site visit undertaken. The application will be determined in accordance with the relevant LPA scheme of delegation which may entail the application being determined by the planning committee. The planning fee paid is intended to offset the LPAs costs.

General Public

1.7 As per businesses, the requirement for planning permission for the installation of vehicle charging infrastructure will continue, resulting in additional cost to the general public who wish to operate electric/plug-in hybrid vehicles and have charging facilities at home. The planning fee for a householder application is currently £190.00. The associated costs will be as the same as those outlined in paragraph 1.4.

1.8 The need for planning permission may deter some from the purchase of a electric/plug-in hybrid vehicle to the detriment of the benefits of decarbonised travel.

Benefit Analysis for Option 1 – Do nothing

Businesses

1.9 There are no indirect or direct benefits for businesses.

[1] Benchmarking the costs to applicants of submitting a planning application. https://webarchive.nationalarchives.gov.uk/20090903233426/http://www.communities.gov.uk/documents/planningandbuilding/pdf/benchmarkingcostsapplication.pdf

Local Planning Authorities

1.10 LPAs retain the associated planning application fee and their ability to influence the siting and appearance of electric vehicle charging infrastructure.

General Public

1.11 There are no indirect or direct benefits for the general public.

Cost Analysis for Option 2: Make the legislation

Businesses

1.12 There are no additional direct or indirect costs to businesses. The proposals are de-regulatory and as such are expected to result in cost-savings to businesses. These cost-savings are considered further in paragraph 1.15.

Local Planning Authorities

1.13 There will be reduction in planning application fee income, however, this is offset by the LPA not incurring the costs involved in dealing with those applications. In many circumstances, the application fee does not cover the cost of determining a planning application.

General Public

1.14 There are no additional direct or indirect costs to the general public.

Benefit Analysis for Option 2

Business

1.15 Those wishing to install electric vehicle charging points will make savings on planning application fees (currently £190.00) and associated administration costs incurred for the preparation and submission of a planning application, as outlined in paragraph 1.4. There are also time savings for businesses and the uncertainty created by the planning application decision process is removed.

Local Planning Authorities

1.16 The reduced number of planning applications needing to be determined will allow LPAs to reallocate valuable staff resources to other planning applications which may have more complex and significant impacts.

General Public

1.17 As per businesses, those wishing to install electric vehicle charging points at their homes will make savings on planning application fees (currently £190.00) and associated administration costs incurred for the preparation and submission of a planning application as outlined in paragraph 1.4.

Environment

1.18 There were 2,500 plug-in vehicles in Wales in 2017 and while the number is increasing (new electric and hybrid registrations in Wales increased by 35% in 2017), concerns remain about the charging infrastructure. This legislation is expected to facilitate the development of a network of electric charging points across Wales and may thus encourage more drivers to shift from a petrol or diesel vehicle to a plug-in vehicle. There are a number of environmental benefits associated with electric vehicles including reduced carbon emissions and improved air quality.

2. Devolved associated lines

2.1 The requirement for a Regulatory Impact Assessment ("RIA") has been assessed against the RIA code for subordinate legislation. In this instance, an RIA was not considered necessary relating to these provisions.

2.2 These amendments to the GPDO are as a consequence of the commencement of sections 39 to 42 of the Wales Act 2017 insofar as they affect the devolution of the consenting of overhead electric lines. This devolution occurs on 1 April 2019 and from that date, a consent under section 37 of the Electricity Act 1989 cannot be gained for a devolved associated line. Instead, such applications are to be consented under the Town and Country Planning Act 1990.

2.3 A series of exemptions are set out in section 37(2)(a)-(b) of the Electricity Act 1989 and in the Overhead Lines (Exemption) (England and Wales) Regulations 2009 which prevent the requirement for consent where the proposal involves the installation of an overhead electric line. For continuity and to preserve the existing legal situation, those exemptions are transferred to permitted development rights under the 1990 Act, where they relate to devolved associated lines.

2.4 Accordingly, as this results in routine technical and consequential amendments which have no policy impact, no RIA is required. It is noted the Wales Act 2017 was accompanied by an EMRIA which assessed the impact of the devolution of various functions, and is available at:

https://webarchive.nationalarchives.gov.uk/20160611073307/https:/www.gov.uk/government/uploads/system/uploads/attachment_data/file/527740/Wales_Bill_impact_assessment.pdf

3. Telecommunication – Size and Widths of Mast etc.

Options

3.1 The following options are considered:

Option 1: Do nothing – Legislation remains the same and the existing permitted development rights apply.

Option 2: - Make the legislation – Increases the permitted development rights for the heights and widths of telecommunication masts with amendments to existing prior approval arrangements.

Option 2 is the favoured option as it will result in a more enabling regime for the installation of telecommunication infrastructure.

Cost and Benefits Analysis

3.2 The sectors most likely to be affected by the proposals include:

- Mobile infrastructure operators wishing to install new or enlarged mobile telecommunication equipment
- LPAs who determine applications for planning permission.
- The general public who will potentially benefit from increased mobile coverage but may also be impacted on by higher masts in their communities.

3.3 The following cost and benefit analysis has been undertaken for each of the above sectors:

Cost Analysis for Option 1: Do nothing

Business

3.4 The requirement for planning permission for larger masts and equipment will continue, resulting in additional cost to the mobile industry to roll out their networks. This includes the planning application fee and additional associated costs for the preparation of the necessary supporting information, such as plans.

3.5 The requirement for planning permission may also deter some operators from installing new, or larger masts, to the detriment of communities in the vicinity who will not benefit from greater mobile coverage.

Local Planning Authorities

3.6 LPAs will continue to validate, process and determine applications for planning permission for larger masts and equipment. Each application will need to be publicised and a site visit undertaken. The application will be

determined in accordance with the relevant LPA scheme of delegation which may entail the application being determined by the planning committee. The planning fee paid is intended to offset the LPAs costs.

General Public

3.7 There are no direct costs to the public.

Benefit Analysis for Option 1 – Do nothing

Businesses

3.8 There are no indirect or direct benefits for businesses; this will maintain the existing situation.

Local Planning Authorities

3.9 LPAs retain the associated planning application fee for larger masts etc and have more control over the development.

General Public

3.10 There are no indirect or direct benefits for the general public.

Cost Analysis for Option 2: Make the legislation

Businesses

3.11 There are no additional direct or indirect costs to businesses. The proposed legislation is de-regulatory and expected to result in cost-savings to businesses. This is considered further in paragraph 3.14.

Local Planning Authorities

3.12 There will be reduction in planning application fee income, however, this is offset by the LPA not incurring the costs involved in dealing with those applications. In many circumstances, the application fee does not cover the cost of determining a planning application.

General Public

3.13 There are no additional direct or indirect costs to the general public. There will be less scope to challenge in principle new or englarged equipment, however the ability to make comments on siting and design issues will remain through the prior approval process.

Benefit Analysis for Option 2

Business

3.14 Mobile operating companies will be able to apply for increased sizes of masts without the need for full planning permission. Narrowing discussions around siting and design mean that the principle of the development will not need to be discussed. Increased mobile coverage will also enable businesses to more readily access communication networks. In those circumstances where planning permission or prior approval is no longer required, figures from the UK Government suggest that there is an average £2,250 reduction in administration costs.

3.15 Moving from full planning permission to permitted development rights could reduce the time taken to go through the necessary planning processes as deemed consent is given after 8 weeks. This reduces uncertainty in the industry.

Local Planning Authorities

3.16 The reduced number of planning applications needing to be determined will allow LPAs to reallocate valuable staff resources to other planning applications which may have more complex and significant impacts. LPAs may experience a rise in the number of environmental complaints due to impact on amenity.

General Public

3.17 The general public will benefit from a potential increase in mobile coverage and the wider economic and social benefits arising from greater connectivity.

4. Development by Electronic Communications Code Operators: Fixed-line Broadband

Options

4.1 The following options are considered:

Option 1: Do nothing - Part 24, A.2(4) (a), the prior approval application requirement will recommence on 1 June 2019 for the installation of all telecommunications apparatus on article 1(5) land: developers will be required to make prior approval applications to the local planning authority (LPA) which have to be processed by them (including undertaking the statutory publicity and consultation requirements).

Option 2: - Permanently dis-applying the Part 24, A.2 (4) (a), prior approval requirement where specified equipment is being used on article 1(5) land subject to standard conditions.

Option 2 is the preferred option as it will maintain the expedited process for the roll-out of broadband in Wales.

Cost and Benefits Analysis

4.2 The sectors most likely to be affected by the proposals include:

- Businesses such as Electronic Communications Code Operators ("Code Operators") wishing to install apparatus to provide telecommunications services.
- LPAs who determine prior approval applications as well as applications for planning permission.
- The general public who may have an interest in an individual development proposal.

4.3 The following cost and benefit analysis has been undertaken for each of the above sectors:

Cost Analysis for Option 1: Do nothing

Businesses

4.4 From June 2019, the prior approval requirement will recommence with a cost to Code Operators for each application made of a standard application fee of £380 together with the costs with producing a valid application, e.g. supporting information such as plans, drawings, and agent fees to prepare, submit and manage the application etc. Whilst there are no specific costs available for this type of development, it is assumed that the costs are likely to be similar to those for a prior approval application, estimated as £2,350 in the benchmarking study referenced in paragraph 1.4.

4.5 Also, there is an indirect cost to businesses in any delay in the determination of the planning application and the ultimate provision of superfast broadband to increase and improve digital connectivity.

Local Planning Authorities

4.6 Individual prior approval applications made to the LPA will need to be the subject of a decision, and that decision will need to be notified to the developer, within a period of 56 days. Regardless of whether in the individual case they do actually exercise their discretionary power, each application will need to be publicised by the LPA and be the subject of consultations by them in order to meet statutory requirements. The planning fee paid is intended to offset the LPAs costs.

General Public

4.7 There is an indirect cost to the general public through any potential delay of access to superfast broadband as a result of delays to the installation of the necessary infrastructure.

Benefit Analysis for Option 1 – Do nothing

Businesses

4.8 There are no indirect or direct benefits for businesses.

Local Planning Authorities

4.9 A discretionary power remains available to LPAs to require their approval, in any specific case, to the siting and appearance of the development.

General Public

4.10 Any prior approval or planning applications which are made will need to be publicised by the LPA affording third parties, such as the general public, the opportunity of making representations to the LPA about the individual application made.

Cost Analysis for Option 2

Businesses

4.11 There are no additional direct or indirect costs to businesses.

Local Planning Authorities

4.12 There will be a loss of future potential planning fee income from the prior approval applications and planning applications no longer require, this however is offset by the LPA not incurring the costs involved in dealing with those applications.

General Public

4.13 There are no additional direct or indirect costs to the general public.

Benefit Analysis for Option 2

Businesses

4.14 There are direct cost savings for Code Operators through the saving of the prior approval application fee and the associated costs involved in making the application. The process will be streamlined, offering more certainty for Code Operators reducing unnecessary delay and expense.

4.15 Businesses generally are also likely to benefit:

a) as potential users, from any earlier provision of telecommunications services which the infrastructure involved is intended to provide; and

b) from the wider resulting economic benefits of good digital connectivity.

Local Planning Authorities

4.16 The reduced number of prior approval applications and planning applications needing to be determined will allow LPAs to reallocate valuable staff resources to other planning applications which may have more complex and significant impacts.

General Public

4.17 The general public will benefit from earlier provision of telecommunications services which the infrastructure involved is intended to provide and the wider resulting social and economic benefits of improved digital connectivity.

5. Non-domestic solar installations

Options

5.1 The following options are considered:

Option 1: Do nothing – Legislation remains the same and the existing permitted development rights apply.

Option 2: - Make the legislation – Removes the energy threshold output limitation on the current permitted development rights and introduces additional conditions/limitations restricting development near an airport or aerodrome and requires the possible affects of glint and glare to be considered.

Option 2 is the favoured option as it will result in a more enabling regime for the deployment of non-domestic solar installations.

Cost and Benefits Analysis

5.2 The sectors most likely to be affected by the proposals include:

- Renewable energy companies / businesses wishing to install solar panels on the roof of non domestic buildings.
- Local planning authorities through the processing of planning applications.
- The general public who will potentially be impacted on by increased numbers of solar panels on roofs of non domestic buildings in their communities.

5.3 The following cost and benefit analysis has been undertaken for each of the above sectors:

Cost Analysis for Option 1: Do nothing

Business

5.4 The requirement for planning permission for larger solar installations on non domestic roofs will remain. This includes the planning application fee and additional associated costs for the preparation of the necessary supporting information, such as plans.

5.5 The requirement for planning permission may deter some businesses from considering installing solar panels on their roofs which mean this significant resource is left untapped.

Local Planning Authorities

5.6 LPAs will continue to validate, process and determine applications for planning permission for larger solar arrays on non domestic roofs. Each application will need to be publicised and a site visit undertaken. The application will be determined in accordance with the relevant LPA scheme of delegation which may entail the application being determined by the planning committee. The planning fee paid is intended to offset the LPAs costs.

General Public

5.7 There are no direct costs to the public.

Benefit Analysis for Option 1 – Do nothing

Businesses

5.8 Businesses within 2-3km of an airport or aerodrome will continue to be able to erect solar arrays on, or within the grounds of, non-domestic buildings without the need for planning permission, subject to compliance with the relevant conditions.

Local Planning Authorities

5.9 LPAs retain the associated planning application fee for larger masts etc and have more control over the development.

General Public

5.10 There are no indirect or direct benefits for the general public.

Cost Analysis for Option 2: Make the legislation

Businesses

5.11 The proposed legislation is de-regulatory and as such there are potential cost-savings to businesses through a no longer requiring planning permission for larger solar arrays (subject to compliance with the relevant conditions) and the costs associated with preparing and submitting an application.

5.12 Notwithstanding this, businesses within 2-3km of an airport or aerodrome will no longer benefit from permitted development rights for solar arrays on, or within the ground of, non-domestic buildings. This will in effect increase costs (incurred by through preparation and submission of a planning application) for businesses within this proximity threshold of an airport or aerodrome should they wish to undertake development previously permitted by Part 43 of the GPDO.

5.13 This is however considered to affect a relatively small number of buildings. An increase in costs for impacted properties (should they wish to undertake solar development previously permitted by Part43) is not considered to outweigh the potential savings to be achieved by the majority of businesses in Wales who will able to install as much solar panel apparatus as they wish, subject to compliance with the relevant limitations and conditions.

5.14 The additional condition concerning minimising glint or glare is unlikely to result in any additional costs as such consideration of the impacts of the siting of solar development should already be taken into account by the solar industry when surveying sites.

Local Planning Authorities

5.15 Local Planning Authorities may feel that they will lose control over the siting and design of new non domestic solar installations, however conditions are in place to limit the impact. There will be reduction in planning application fee income, however, this is offset by the LPA not incurring the costs involved in dealing with those applications. In many circumstances, the application fee does not cover the cost of determining a planning application.

5.16 The potential number of additional applications that may be submitted as a result of the new condition regarding development within 3km of an airport or aerodrome is considered to be de minimis in respect of Local Planning Authority fee income.

General Public

5.17 There are no additional direct or indirect costs to the general public.

Benefit Analysis for Option 2

Business

5.18 Businesses will benefit from not paying planning application fees and associated supporting evidence necessary to accompany such an application. This should lead to an increase in the number of installations, thereby assisting in meeting renewable energy and carbon targets.

Local Planning Authorities

5.19 The reduced number of planning applications needing to be determined will allow LPAs to reallocate valuable staff resources to other planning applications which may have more complex and significant impacts.

General Public

5.20 The general public will benefit from a potential increase in mobile coverage and the wider economic and social benefits arising from greater connectivity.

6. Consultation

6.1 Consultation was undertaken on wider proposals for the amendment and consolidation of the Town and Country Planning (Use Classes) Order 1987 and the GPDO the proposals between 31 May and 28 September 2018. The consultation paper was available on the Welsh Government's website. In addition, key stakeholders from the private, public and third sectors were directly notified. In total, 148 responses were received.

6.2 A summary of responses is available on the Welsh Government website and includes details of changes made to the proposals.

7. Competition Assessment

7.1 A competition filter test has been applied to the proposed amendments. The results of the test suggest that the proposals are unlikely to have any significant detrimental effect on competition.

8. Post implementation review

8.1 Regular meetings between Welsh Government's Planning Directorate and business sector representatives and Chief Planning Officers enables discussion regarding any issues or concerns with the arrangements introduced by the new secondary legislation. Feedback from the Planning Inspectorate (Wales) and representations to the Welsh Government's Planning Directorate by interested sectors, Assembly Members and the public will also provide evidence of the effectiveness of the new arrangements.

Agenda Item 4.6

SL(5)354 – The Local Health Boards (Area Change) (Wales) (Miscellaneous Amendments) Order 2019

Background and Purpose

This Order is made by the Welsh Ministers pursuant to sections 11, 203(9) and (10) and 204(1) of, and paragraph 11 of Schedule 2 to, the National Health Service (Wales) Act 2006.

The main changes effected by the Order, which come into force on 1 April 2019, are as follows:

1. The principal local government area of Bridgend is transferred from Abertawe Bro Morgannwg University Local Health Board and forms part of the area of Cwm Taf University Local Health Board;

2. Abertawe Bro Morgannwg University Local Health Board is renamed Swansea Bay University Local Health Board; and

3. Cwm Taf University Local Health Board is renamed Cwm Taf Morgannwg University Local Health Board.

The Order also makes associated changes to the area and names of the relevant Community Health Councils and Safeguarding Boards.

The Order amends a series of statutory instruments to give effect to, and in consequence of, the above changes.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. **Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements;**

   Article 7 of this Order amends Schedule 1 to the Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010 to reflect the new names of the relevant Community Health Councils from 1 April 2019. However, Schedule 2 to those Regulations contains provision specifying the current names of the Councils, and has not been amended by this Order.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

2. **Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly**

The Minister for Health and Social Services, Vaughan Gething AM, issued a written statement on 25 February 2019 confirming that this Order has been laid to give effect to the health board boundary and name changes, following the outcome of a consultation published on 14 June 2018. The consultation period ran from 13 December 2017 to 7 March 2018.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

We note and accept the reporting point. We will seek to make this consequential amendment in further amending regulations as soon as possible.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 349 (W. 83)

NATIONAL HEALTH SERVICE, WALES

The Local Health Boards (Area Change) (Wales) (Miscellaneous Amendments) Order 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order changes the areas of Cwm Taf University Local Health Board and Abertawe Bro Morgannwg University Local Health Board and also changes their names.

The principal local government area of Bridgend is transferred from Abertawe Bro Morgannwg University Local Health Board and forms part of the area of Cwm Taf University Local Health Board. Abertawe Bro Morgannwg University Local Health Board is renamed Swansea Bay University Local Health Board and Cwm Taf University Local Health Board is renamed Cwm Taf Morgannwg University Local Health Board.

Amendments giving effect to these changes are made to the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009 and the Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009.

Changes to local health board areas have the effect of changing the area of the relevant Community Health Councils. Accordingly, this Order amends the Community Health Councils (Establishment, Transfer of Functions and Abolition) (Wales) Order 2010 to reflect the changes in local health board areas. In addition, Cwm Taf Community Health Council is renamed Cwm Taf Morgannwg Community Health Council and Abertawe Bro Morgannwg Community Health Council is renamed Swansea Bay Community Health Council. Amendments are also made to the number of members of those Councils.

This Order also makes amendments to other statutory instruments arising from the changes described above.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2019 No. 349 (W. 83)

NATIONAL HEALTH SERVICE, WALES

The Local Health Boards (Area Change) (Wales) (Miscellaneous Amendments) Order 2019

Made 22 February 2019

Laid before the National Assembly for Wales 25 February 2019

Coming into force 1 April 2019

The Welsh Ministers, in exercise of the powers conferred by sections 11, 203(9) and (10) and 204(1) of, and paragraph 11 of Schedule 2 to, the National Health Service (Wales) Act 2006(**1**), make the following Order.

Title, commencement and application

1.—(1) The title of this Order is the Local Health Boards (Area Change) (Wales) (Miscellaneous Amendments) Order 2019 and it comes into force on 1 April 2019.

(2) This Order applies in relation to Wales.

Interpretation

2. In this Order "the Establishment Order" means the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009(**2**).

Change of local health board areas and names

3.—(1) The principal local government area of Bridgend is transferred from Abertawe Bro Morgannwg University Local Health Board and forms

(**1**) 2006 c. 42.
(**2**) S.I. 2009/778 (W. 66), amended by S.I. 2013/2918 (W. 286).

part of the area of Cwm Taf University Local Health Board(**1**).

(2) Cwm Taf University Local Health Board is renamed, and is to be known as, Cwm Taf Morgannwg University Local Health Board.

(3) Abertawe Bro Morgannwg University Local Health Board is renamed, and is to be known as, Swansea Bay University Local Health Board.

(4) Accordingly, for Schedule 1 to the Establishment Order substitute the new Schedule 1 set out in the Schedule to this Order.

(5) In this article, the "principal local government area" means the principal local government area for the purposes of the Local Government Act 1972(**2**).

Amendments to the Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009

4.—(1) In Schedule 4 to the Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009(**3**) (universities who may nominate a member of a local health board), the table is amended as follows.

(2) In column 2—

(a) in row 2, for "Cwm Taf Local Health Board" substitute "Cwm Taf Morgannwg University Local Health Board";

(b) in row 4, for "Abertawe Bro Morgannwg University Local Health Board" substitute "Swansea Bay University Local Health Board".

Amendments to the Welsh Health Specialised Services Committee (Wales) Regulations 2009

5. In regulation 2 (interpretation) of the Welsh Health Specialised Services Committee (Wales) Regulations 2009(**4**), in the definition of "host Local Health Board", for "Cwm Taf Local Health Board" substitute "Cwm Taf Morgannwg University Local Health Board".

(**1**) Cwm Taf University Local Health Board was previously named Cwm Taf Local Health Board but was renamed by article 2(b) of S.I. 2013/2918 (W. 286).

(**2**) 1972 c. 70. Relevant amendments were made by the Local Government (Wales) Act 1994 (c. 19).

(**3**) S.I. 2009/779 (W. 67), amended by S.I. 2012/1641, S.I. 2013/235, S.I. 2014/1815, S.I. 2015/137 and S.I. 2016/481.

(**4**) S.I. 2009/3097 (W. 270), amended by S.I. 2012/1641, S.I. 2013/235, S.I. 2015/137 and S.I. 2016/481.

Amendments to the Community Health Councils (Establishment, Transfer of Functions and Abolition) (Wales) Order 2010

6.—(1) In Schedule 1 to the Community Health Councils (Establishment, Transfer of Functions and Abolition) (Wales) Order 2010(**1**) (community health council names and local health board areas for which they are established), the table is amended as follows(**2**).

(2) In column 1 (names of community health councils)—

(a) in row 2, for "Abertawe Bro Morgannwg Community Health Council" substitute "Swansea Bay Community Health Council";

(b) in row 5, for "Cwm Taf Community Health Council" substitute "Cwm Taf Morgannwg Community Health Council".

(3) In column 2 (local health board areas for which the community health council is established)—

(a) in row 2, for "Abertawe Bro Morgannwg University Local Health Board" substitute "Swansea Bay University Local Health Board";

(b) in row 5, for "Cwm Taf Local Health Board" substitute "Cwm Taf Morgannwg University Local Health Board".

Amendments to the Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010

7.—(1) The Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010(**3**) are amended as follows.

(2) In the table in Schedule 1 (total number of members to be appointed to membership of a Council by the appointing bodies)—

(a) in column 1 (name of community health council)—

(i) in row 2, for "Abertawe Bro Morgannwg Community Health Council" substitute "Swansea Bay Community Health Council";

(ii) in row 5, for "Cwm Taf Community Health Council" substitute "Cwm Taf

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(**1**) S.I. 2010/289 (W. 38), amended by S.I. 2015/507 (W. 42).

(**2**) Under article 4(2) of the Community Health Councils (Establishment, Transfer of Functions and Abolition) (Wales) Order 2010, if the local health board area assigned to a community health council is varied, the community health council area is to be varied accordingly.

(**3**) S.I. 2010/288 (W. 37), amended by S.I 2013/235, S.I. 2015/137, S.I. 2015/509 (W. 43) and S.I. 2016/481.

Morgannwg Community Health Council";

(b) in column 2 (total number of members to be appointed by relevant local authorities)—

(i) in row 2, for "9" substitute "6";

(ii) in row 5, for "6" substitute "9";

(c) in column 3 (total number of members to be appointed by voluntary organisations)—

(i) in row 2, for "9" substitute "6";

(ii) in row 5, for "6" substitute "9";

(d) in column 4 (total number of members to be appointed by the Welsh Ministers)—

(i) in row 2, for "18" substitute "12";

(ii) in row 5, for "12" substitute "18".

(3) In the table in Schedule 2 (community health councils and local authority areas or parts thereof for which appointments are made and local committees established), in column 2 (local authority areas)—

(a) in row 2—

(i) omit "i. Bridgend", and

(ii) renumber the remaining entries "i. Neath Port Talbot" and "ii. Swansea";

(b) in row 5, after "ii. Rhondda Cynon Taf" insert "iii. Bridgend".

Amendments to the Mental Health (Regional Provision) (Wales) Regulations 2012

8.—(1) In Schedule 2 to the Mental Health (Regional Provision) (Wales) Regulations 2012(**1**) (regional provision and local mental health partners), the table is amended as follows.

(2) In column 1 (local authority areas (or parts thereof) applied as regions)—

(a) in row 3, omit "Bridgend County Borough Council";

(b) in row 5, before "Merthyr Tydfil County Borough Council" insert "Bridgend County Borough Council".

(3) In column 2 (local mental health partners)—

(a) in row 3—

(i) omit "Abertawe Bro Morgannwg University Local Health Board" and after "Neath Port Talbot County Borough Council" insert "Swansea Bay University Local Health Board", and

(**1**) S.I. 2012/1244 (W. 152).

(ii) omit "Bridgend County Borough Council";

(b) in row 5—

(i) before "Cwm Taf Local Health Board" insert "Bridgend County Borough Council", and

(ii) for "Cwm Taf Local Health Board" substitute "Cwm Taf Morgannwg University Local Health Board".

Amendments to the Emergency Ambulance Services Committee (Wales) Regulations 2014

9. In regulation 2 of the Emergency Ambulance Services Committee (Wales) Regulations 2014(**1**) (interpretation), in the definition of "host Local Health Board", for "Cwm Taf University Local Health Board" substitute "Cwm Taf Morgannwg University Local Health Board".

Amendments to the Safeguarding Boards (General) (Wales) Regulations 2015

10.—(1) The Safeguarding Boards (General) (Wales) Regulations 2015(**2**) are amended as follows.

(2) In the table in Schedule 1 (safeguarding board areas)—

(a) in column 1 (name of safeguarding board area)—

(i) in row 2, for "Cwm Taf" substitute "Cwm Taf Morgannwg";

(ii) in row 6, for "Western Bay" substitute "West Glamorgan";

(b) in column 2 (extent of safeguarding board area)—

(i) in row 2, before "Merthyr Tydfil County Borough Council" insert "Bridgend County Borough Council,";

(ii) in row 6, omit "Bridgend County Borough Council".

(3) In the table in Schedule 2 (lead partners), in column 1 (safeguarding board area)—

(a) in row 2, for "Cwm Taf" substitute "Cwm Taf Morgannwg";

(b) in row 6, for "Western Bay" substitute "West Glamorgan".

(**1**) S.I. 2014/566 (W. 67), amended by S.I. 2015/137 and S.I. 2016/481.
(**2**) S.I. 2015/1357 (W. 131), amended by S.I. 2018/494 (W. 85).

Julie Morgan
Deputy Minister for Health and Social Services, under authority of the Minister for Health and Social Services, one of the Welsh Ministers
22 February 2019

SCHEDULE Article 3(4)

Schedule to be substituted for Schedule 1 to the Establishment Order

"SCHEDULE 1 Articles 3 and 4

Local Health Board Names and Principal Local Government Areas for which they are Established

Column 1 *Names of Local Health Boards established under article 3*	*Column 2* *Principal local government areas for which the Local Health Board is established*
1 Aneurin Bevan University Local Health Board	Blaenau Gwent, Caerphilly, Monmouthshire, Newport and Torfaen
2 Cwm Taf Morgannwg University Local Health Board	Bridgend, Merthyr Tydfil and Rhondda Cynon Taf
3 Cardiff and Vale University Local Health Board	Cardiff and Vale of Glamorgan
4 Swansea Bay University Local Health Board	Neath Port Talbot and Swansea
5 Hywel Dda University Local Health Board	Carmarthenshire, Ceredigion and Pembrokeshire
6 Betsi Cadwaladr University Local Health Board	Anglesey, Conwy, Denbighshire, Flintshire, Gwynedd and Wrexham"

Explanatory Memorandum to the Local Health Boards (Area Change) (Wales) (Miscellaneous Amendments) Order 2019

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Local Health Boards (Area Change) (Wales) (Miscellaneous Amendments) Order 2019 and therefore, I am satisfied that the benefits justify the likely costs.

Julie Morgan
Deputy Minister for Health and Social Services,
under the authority of the Minister for Health and Social Services, one of the Welsh Ministers

25 February 2019

1. Description

This Statutory Instrument amends the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009 and makes associated consequential changes to the:

- Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009
- Welsh Health Specialised Services Committee (Wales) Regulations 2009
- Community Health Councils (Establishment, Transfer of Functions and Abolition) (Wales) Order 2010
- Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010
- Mental Health (Regional Provision) (Wales) Regulations 2012
- Emergency Ambulance Services Committee (Wales) Regulations 2014
- Safeguarding Boards (General) (Wales) Regulations 2015

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

Welsh Ministers make the Order in exercise of powers conferred on them by sections 11, 203(9) and (10) and 204(1) of and paragraphs 11 of Schedule 2 to the National Health Service (Wales) Act 2006.

The instrument is subject to the Negative Procedure by virtue of section 203(4) of the National Health Service (Wales) Act 2006.

4. Purpose & intended effect of the legislation

The Order amends Schedule 1 to the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009 to provide that Bridgend principal local government area is assigned to Cwm Taf Local Health Board with effect from 1 April 2019 and to change the name of Cwm Taf University Local Health Board and Abertawe Bro Morgannwg University Health Local Board to reflect the boundary change.

The consequential amendments are made to ensure consistency of the law. Principally they reflect the change of name to the two health boards in regulations that include the current health board names. They also reflect the change of footprint where referenced.

The amendment to schedule 1 of the Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010 renames the relevant Community Health Councils in accordance with the new health board names.

5. Consultation

Details of the consultations undertaken are included within the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

The purpose of amending the Order is to provide that healthcare services for people in the Bridgend County Borough Council (CBC) area will be planned, secured and delivered by Cwm Taf LHB instead of Abertawe Bro Morgannwg LHB. The effect is to ensure Bridgend CBC is not disadvantaged working with multiple-strategic partners across two strategic footprints, and to support the strengthening of regional partnership arrangements, leadership and decision making.

Options

Option 1: Do Nothing
Leave Bridgend CBC within the area of Abertawe Bro Morgannwg LHB with the need to maintain relationships with a relatively high number of partners and continue to work across two strategic footprints in South Wales.

Option 2: Amend the health board boundary

Amend the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009 so that:

(a) healthcare services for people in the Bridgend CBC area are planned, secured and delivered by Cwm Taf LHB instead of Abertawe Bro Morgannwg LHB by assigning the Bridgend principal local government area to Cwm Taf University Health Board; and
(b) the health board names reflect the new respective health board footprints.

Costs and Benefits

Benefits

Option 1: There are no additional benefits associated with the Do Nothing option. The key impacts and disbenefits of not changing the health board assignment of Bridgend CBC are considered to be:

- the capacity of elected members to engage in effective partnerships is spread over two extensive strategic partnerships, stretching the ability to develop relationships and influence strategic directions;
- scrutiny and democratic participation is more complex than it needs to be and it is more difficult for members of the public, or other organisations to understand where decisions are made;

- there is added complexity in decision-making and governance; and senior officer time is disproportionately taken up with managing increasingly different relationships;
- as the City Deal and other partnership arrangements continue to develop and social services and health integration is strengthened, it will become increasingly challenging for Bridgend CBC to influence partnership arrangements and services on the basis of existing arrangements;
- difficulties in dealing with separate partnership arrangements for related policy areas. For example under current partnership arrangements social care and education services are provided on separate strategic footprints. Services such as youth offending and additional learning needs amongst others need to engage with education and social care;
- as partnership working, including the City Deal, becomes more established over time, the particular challenge for Bridgend CBC is expected to become more pronounced.

The challenges outlined above and associated costs would be expected to increase as partnership working arrangements become more established.

Option 2: Amending the Order will ensure Bridgend CBC is not disadvantaged by multiple-strategic partners. The intent would be to simplify arrangements, establish more congruous partnerships across economic activity and health services, and support the strengthening of regional partnership arrangements.

To summarise the key current partnerships:

- healthcare services are provided by Abertawe Bro Morgannwg UHB with partner authorities across Swansea Bay;
- integrated health and social care is provided through the Western Bay regional partnership board, in partnership with Neath Port Talbot Council and Swansea City Council, Abertawe Bro Morgannwg UHB and other partners;
- Bridgend CBC is integrated into the Cardiff Capital Region for economic activity working with local authority partners across south east Wales, none of which have healthcare services provided by Abertawe Bro Morgannwg UHB;
- education improvement services are provided in partnership with Rhondda Cynon Taf Council and Merthyr Council, the two local authorities that have their healthcare services provided by Cwm Taf UHB.

The proposed assignment change would ensure that Bridgend CBC's partnership arrangements for health and social services were more aligned with developing economic and current education partnership arrangements, and ensure that Bridgend's partnership arrangements were consistent with all other local authorities in Wales.

Costs

Option 1:

This is the Do Nothing option and as such there are no additional costs associated with this option.

It is not possible to articulate specific costs associated with not making the assignment change. The costs arise from the on-going challenge for Bridgend CBC in maintaining current and future partnership arrangements across two strategic footprints which would accumulate over time. Costs would include lost opportunities to improve service outcomes or efficiency by working across service boundaries where they are part of different regional arrangements.

Option 2:

The Welsh Government has confirmed funding of up to £2.9m to meet the transitional costs of the transfer in 2018-19 following an assessment of costs undertaken by the health boards. £100,000 has been allocated to Bridgend County Borough Council in recognition of costs associated with the boundary change and the process of making changes to partnership arrangements between health boards.

A summary of the costs breakdown for health boards is provided below:

Summary Resource Breakdown	Programme Management £k	Due Diligence & External Advice £k	Planning & Decision Making £k	Transition £k	Total £k
Core Programme Team	£175				£175
Workforce	£100	£50	£150	£300	£600
Governance & Comms			£100	£100	£200
ICT			£100	£400	£500
Performance and Informatics		£50	£50	£50	£150
Finance	£100	£100	£200	£200	£600
Capital and Estates		£50	£150	£50	£250
Clinical and Non-Clinical Services		£0	£100	£150	£250
Partnerships		£50	£50		£100
Quality and Patient Safety		£50	£50		£100
Total	**£375**	**£350**	**£950**	**£1,250**	**£2,925**

In addition the health boards have estimated costs associated with the name change to reflect the new footprints will be £100,000 for each health board and have confirmed that this will be met from current budgets. The health boards have indicated they intend to phase in the name change over time taking action to minimise the cost impact.

Impact

In consultation, some concerns were raised by the voluntary sector about changes to some funding arrangements from the health boards where they are based on current health board footprint arrangements. Funding arrangements may change over time as an outcome of the boundary change to reflect the new footprints.

There are not considered to be other impacts that are not identified in this impact assessment. No service changes are planned as a result of the boundary change.

Impact assessments were undertaken or considered in preparation for the consultation on the boundary change and can be found at: https://beta.gov.wales/proposed-health-board-boundary-change-bridgend

Consultation

The Welsh Government has maintained a dialogue with the health boards and other key stakeholders throughout the consultation and the planning process with observer status at the health boards Joint Transition Board, regular meetings with the Joint Transition Team and discussion about the boundary change at regular meetings with senior officers of the health boards.

A 12-week public consultation was undertaken on the principle of the boundary change. Organisations and individuals were consulted in a mixture of meetings, consultation events and formal responses to the written consultation.

A summary of the outcome of the consultation is available at: https://beta.gov.wales/proposed-health-board-boundary-change-bridgend

The Welsh Government undertook a 12 week consultation on the proposal to change the health board boundary between 13 December 2017 and 7 March 2018.

In total, 145 responses to the consultation were received, with 8 subsequently discarded as obvious duplicates. From the 137 responses considered as part of the analysis, 70 of the respondents requested anonymity, and 13 returns were sent as narrative responses. Not all respondents answered the questions directly; some chose not to answer a particular question and 13 sent a summary of their views instead of the web-based form.

The following table provides a breakdown of the number of respondents into types based on sector.

Category	**Numbers**
Health Bodies	11
Third Sector / Voluntary Organisation	10
Local Government	6
Individual / Organisation not stated	90

Elected Representatives	5
Public Boards / Associations	3
Emergency and Other Public Services	5
Others / Trade Unions	7
Total	137

Welsh Government officials attended stakeholder events by invitation within the ABMU health board area to discuss the consultation proposal.

A summary of responses has been published and can be found at: https://beta.gov.wales/proposed-health-board-boundary-change-bridgend

Following formal consultation on the boundary change a proposal was made to change the names of the respective health boards to reflect the changed geographical areas. Proposal for the name changes were made by the health boards to the Welsh Government following a period of engagement with their key stakeholders.

Cwm Taf University Health Board undertook a process of engagement with stakeholders and staff between 24 October 2018 and 7 November to gauge view on the potential name change. An online survey was issued via email to a total of 9,718 stakeholders. This comprised of 266 external stakeholders and 9,452 internal stakeholders (NHS Wales staff). The survey was also shared via social media channels to raise awareness of the engagement process. A majority of respondents agreed that the name should be changed and out of a choice of two names 'Cwm Taf Morgannwg' was supported by the majority.

Abertawe Bro Morgannwg University Health Board undertook a process of engagement with staff and stakeholders through letters to stakeholder representatives inviting comment, an online survey, engagement through the Board's other social media platforms and, with staff, through the Board's intranet. The online survey was available from October 24. All responses to the survey (online, email or hard copy) were requested no later than November 7 at 12pm. In response to a question asking which of the name proposed would better reflect the geography and footprint of the populations and communities the Board would serve a majority of respondents chose Swansea Bay University Health Board / Bwrdd Iechyd Prifysgol Bae Abertawe (option 1) and 10.67% chose Western Bay University Health Board / Bwrdd Iechyd Prifysgol Bae'r Gorllewin (option 2).

A separate consultation has not been undertaken on the consequential amendments.

Competition Assessment

A competition assessment has been undertaken – the Regulations are unlikely to have a significant detrimental effect on competition.

Post implementation review

The Welsh Government will work with the health boards and other stakeholders to ensure that the impact of the Order is understood.

SL(5)355 – The Sea Fishing (Penalty Notices) (Wales) Order 2019

Background and Purpose

This Order creates a scheme for the issuing and payment of penalty notices for certain offences relating to sea fishing. It revokes the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 and replaces it with a scheme that applies to offences created under domestic legislation as well as those arising as a result of a breach of an enforceable community restriction or other obligation.

This Order provides for the issuing of a penalty notice (article 3), the content of such a notice (article 4), and the effect and method of paying a penalty (articles 5 and 6). It also makes provision for penalty notices to be issued to different persons for the same offence arising out of the same set of circumstances whereby payment by one person is treated as being payment by another, in the absence of objection from the other (article 7). Provision is also made for the withdrawal of a penalty notice (article 9).

A master, owner or charterer of a fishing boat that is from outside the United Kingdom and who has paid a penalty may request to be tried for the offence (article 10), in which case the penalty notice will be treated as never having been issued and the penalty will be repaid in the event of acquittal or discontinuance of the related court proceedings. In the event of conviction, the penalty notice will also be treated as never having been issued, but the penalty must be applied towards paying any fine imposed.

Procedure

Negative

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

The preamble cites section 294 of the Marine and Coastal Access Act 2009, which confers powers relating to penalty notices on the Welsh Ministers as the 'appropriate national authority' 'in relation to Wales or vessels within the Welsh zone' (section 294(8)). Powers 'in relation to England or vessels outside the Welsh zone' are conferred by that subsection on the Secretary of State.

However, article 1(3) of the Order states that "This Order applies in relation to Wales, the Welsh zone and Welsh fishing boats wherever they may be." Given the clear geographical limitation in section 294(8), the 'wherever they may be' element of article 1(3) appears to be beyond the powers of the Welsh Ministers.

[Standing Order 21.2(i) – there appears to be doubt as to whether it is intra vires.]

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3(ii) in respect of this instrument – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Article 6(2) of the Order prevents the use of cash to pay penalties imposed under this Order. The Explanatory Memorandum provides no explanation for the prohibition of the use of legal tender.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
12 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 363 (W. 86)

SEA FISHERIES, WALES

The Sea Fishing (Penalty Notices) (Wales) Order 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order creates a scheme for the issuing and payment of penalty notices for certain offences relating to sea fishing. It revokes the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 and replaces it with a scheme that applies to offences created under domestic legislation as well as those arising as a result of a breach of an enforceable community restriction or other obligation.

This Order provides for the issuing of a penalty notice (article 3), the content of such a notice (article 4), and the effect and method of paying a penalty (articles 5 and 6). It also makes provision for penalty notices to be issued to different persons for the same offence arising out of the same set of circumstances whereby payment by one person is treated as being payment by another, in the absence of objection from the other (article 7). Provision is also made for the withdrawal of a penalty notice (article 9).

A master, owner or charterer of a fishing boat that is from outside the United Kingdom and who has paid a penalty may request to be tried for the offence (article 10), in which case the penalty notice will be treated as never having been issued and the penalty will be repaid in the event of acquittal or discontinuance of the related court proceedings. In the event of conviction, the penalty notice will also be treated as never having been issued, but the penalty must be applied towards paying any fine imposed.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2019 No. 363 (W. 86)

SEA FISHERIES, WALES

The Sea Fishing (Penalty Notices) (Wales) Order 2019

Made *20 February 2019*

Laid before the National Assembly for Wales *26 February 2019*

Coming into force *22 March 2019*

The Welsh Ministers, in exercise of the powers conferred by section 30(2) and (2ZA) of the Fisheries Act 1981(**1**) now vested in them(**2**) and sections 294 and 316(1)(b) of the Marine and Coastal Access Act 2009(**3**), make the following Order.

Title, commencement and application

1.—(1) The title of this Order is the Sea Fishing (Penalty Notices) (Wales) Order 2019.

(2) This Order comes into force on 22 March 2019.

(3) This Order applies in relation to Wales, the Welsh zone and Welsh fishing boats wherever they may be.

(**1**) 1981 c. 29 ("the 1981 Act"); section 30(2ZA) was inserted by section 293(3) of the Marine and Coastal Access Act 2009 (c. 23). See section 30(3) for the definition of "the Ministers".

(**2**) The functions of the Ministers under section 30 of the 1981 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The functions of the Ministers under section 30 of the 1981 Act, so far as exercisable in relation to the Welsh zone, were transferred to the Welsh Ministers by article 4(1)(e) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760). Those functions were further transferred, on a concurrent basis, in relation to Welsh fishing boats beyond the seaward limit of the Welsh zone by section 59A of and paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006.

(**3**) 2009 c. 23.

Interpretation

2. In this Order—

"officer" ("*swyddog*") means a marine enforcement officer within the meaning of section 235(1)(b) of the Marine and Coastal Access Act 2009;

"penalty" ("*cosb*") means the amount specified in a penalty notice;

"penalty notice" ("*hysbysiad cosb*") means a notice offering the opportunity, by payment of a specified amount in accordance with this Order, to discharge any liability to be convicted of the penalty offence to which the notice relates;

"penalty offence" ("*trosedd cosb*") means an offence (other than one involving assault, obstruction or failure to comply with a requirement imposed by a person) listed in the Schedule.

Issue of penalty notice

3.—(1) Where an officer has reason to believe that a person has committed a penalty offence, the officer may issue that person with a penalty notice for an amount not exceeding £10,000.

(2) In determining the penalty, an officer must have regard to any guidance given by the Welsh Ministers on matters to be taken into account when making such a determination.

(3) A penalty notice is issued at the time when it is sent by post or delivered by hand to the person to whom it relates.

Content of penalty notice

4.—(1) A penalty notice issued under article 3 must—

(a) give particulars of the penalty offence;

(b) state the amount of the penalty;

(c) state the period during which, by virtue of article 5, proceedings will not be taken for the offence;

(d) state the person to whom, and the address at which, the penalty may be paid; and

(e) state that payment must not be in cash.

Restriction on proceedings for penalty offence

5.—(1) Where a person is issued with a penalty notice—

(a) no proceedings may be brought against that person for the penalty offence to which that notice relates before the end of the period of

28 days beginning with the date on which that notice was issued; and

(b) that person may not be convicted of the offence if the penalty is paid before the end of that period.

(2) Paragraph (1)—

(a) is subject to article 10; and

(b) does not apply if the penalty notice is withdrawn in accordance with article 9.

Payment of penalty

6.—(1) Payment of a penalty must be made to the person specified in the penalty notice by sending it by post or by such method as may be specified in the notice.

(2) It may not be made in cash.

Payment of one penalty treated as payment of connected penalties

7.—(1) Where a person ("A") pays the penalty in accordance with article 6, an officer must give a notice (a "notice of deemed payment" ("*hysbysiad taliad tybiedig*")) to all other persons who have been issued with a connected penalty notice.

(2) A penalty notice is a "connected penalty notice" ("*hysbysiad cosb cysylltiedig*") if the penalty offence to which that notice relates is the same as, and arises out of the same set of circumstances as, the penalty offence to which the penalty notice issued to, and paid by, A relates.

(3) A notice of deemed payment must—

(a) be sent by post or delivered by hand;

(b) indicate that A has paid the penalty for A's connected penalty notice;

(c) indicate that the penalty notice issued to the recipient of the notice of deemed payment will be treated as having been paid unless that person gives written notice indicating that it should not be so treated (a "notice of objection" ("*hysbysiad gwrthwynebu*")); and

(d) state the name and address of the person to whom any notice of objection must be given.

(4) A notice of objection must be sent by post or delivered by hand to the person stated in paragraph (3)(d) within—

(a) 28 days beginning with the date on which the penalty notice was issued; or

(b) if later, 5 days beginning with the date on which the notice of deemed payment was given.

(5) If no notice of objection is given in accordance with this article, the penalty notice issued to a person who has been given a notice of deemed payment is to be treated as having been paid.

Certificate of payment or non-payment of penalty notice

8. In any proceedings a certificate purporting to be signed by or on behalf of the Welsh Ministers stating that payment in respect of a penalty notice was or was not received on or before a date specified in the certificate is evidence of the facts stated.

Withdrawal of penalty notices

9.—(1) A penalty notice may be withdrawn by an officer who has reason to believe that it ought not to have been issued (whether to the person named in the penalty notice or otherwise).

(2) A penalty notice may be withdrawn before or after payment of the penalty.

(3) If a penalty notice is withdrawn any penalty paid must be repaid.

Commencement of proceedings after payment of penalty in relation to fishing boats from outside the United Kingdom

10.—(1) This article applies in relation to a penalty notice issued to the master, owner or charterer of a fishing boat other than an English, Northern Ireland, Scottish or Welsh fishing boat.

(2) Where a person in receipt of a penalty notice has paid the penalty, that person may give written notice requesting that proceedings be brought for the penalty offence to which the penalty notice relates.

(3) Such notice must—

(a) indicate that the person giving the notice wishes proceedings to be brought for the penalty offence to which the penalty notice relates; and

(b) be given no later than the end of the period of 28 days beginning with the date on which the penalty notice was issued.

(4) Where a person has given such notice, proceedings may be brought against that person.

(5) Where such proceedings are discontinued or the person is acquitted of the offence, the penalty notice is to be treated as never having been issued and any penalty paid must be repaid.

(6) Where a person is convicted of the offence, the penalty notice is to be treated as never having been issued and paragraph (7) or (8) applies as appropriate.

(7) If a fine is imposed on the person in respect of the penalty offence an officer must—

(a) apply so much of the penalty as does not exceed the amount of the fine in or towards payment of the fine; and

(b) repay any amount of the penalty in excess of the amount of the fine.

(8) If no fine is imposed on the person in respect of the penalty offence, any penalty paid must be repaid.

Transitional provision

11.—(1) This article applies where—

(a) a person has been issued with a penalty notice under the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008(**1**); and

(b) the penalty has not been paid in accordance with article 6, nor has the penalty notice been withdrawn under article 9 of that Order.

(2) The penalty notice is deemed to have been issued under this Order.

Revocation

12. The Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 is revoked.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers
20 February 2019

(**1**) S.I. 2008/984.

SCHEDULE Article 2

Offences relating to sea fishing

1.In the Sea Fisheries (Shellfish) Act 1967(**1**), an offence under—

(a) section 3 (effect of grant of right of regulating a fishery);

(b) section 7 (protection of fisheries);

(c) section 14 (supplementary provisions as to orders under sections 12 and 13);

(d) section 16 (oysters not to be sold between certain dates);

(e) section 17 (taking and sale of certain crabs and lobsters prohibited).

2. In the Sea Fish (Conservation) Act 1967(**2**), an offence under—

(**1**) 1967 c. 83; Section 3 was amended by sections 204, 206 and 207 of the Marine and Coastal Access Act 2009, section 72 of the Environment (Wales) Act 2016 (anaw 3) and S.I. 2015/664. Section 7 was amended by sections 210 and 211 of the Marine and Coastal Access Act 2009, section 2 of the Sale of Goods (Amendment) Act 1994 (c. 32), and S.I. 2015/664. Section 14 was amended by section 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), Schedule 8 to the Criminal Justice and Public Order Act 1994 (c. 33), and section 6 of the Diseases of Fish Act 1983 (c. 30). Section 16 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982, Schedule 8 to the Criminal Justice and Public Order Act 1994 and section 1 of the Sea Fisheries (Shellfish) Act 1973 (c. 30). Section 17 was amended by section 212 and 213 of the Marine and Coastal Access Act 2009, sections 35, 37, 38 and 46 of the Criminal Justice Act 1982, and Schedule 8 to the Criminal Justice and Public Order Act 1994.

(**2**) 1967 c. 84; Section 1 was substituted by section 19 of the Fisheries Act 1981 (c. 29) and amended by section 314 and paragraph 38 of Schedule 13 to the Merchant Shipping Act 1995 (c. 21), section 194 of the Marine and Coastal Access Act 2009, S.I. 1999/1820 and S.I. 2010/760. Section 2 was amended by section 19 of the Fisheries Act 1981 and S.I. 1999/1820. Section 3 was amended by section 195, paragraph 7 of Schedule 14, paragraph 2 of Schedule 15 and Part 4 of Schedule 22 to the Marine and Coastal Access Act 2009, Schedule 2 to the Fishery Limits Act 1976 (c. 83) and S. I. 1999/1820. Section 4 was substituted by section 3 of the Fishery Limits Act 1976 and amended by section 20 of the Fisheries Act 1981, section 1 of the Sea Fish (Conservation) Act 1992 (c.60), sections 4, 196 and 197 of the Marine and Coastal Access Act 2009 and S.I. 1999/1820. Section 4A was inserted by section 21 of the Fisheries Act 1981 and amended by section 3 of the Sea Fish (Conservation) Act 1992, section 6 of the Marine and Coastal Access Act 2009 and S.I. 1999/1820. Section 5 was amended by section 22 of the Fisheries Act 1981, section 198 and paragraph 3 of Schedule 15 to the Marine and Coastal Access Act 2009, paragraph 38 of Schedule 13 to the Merchant Shipping Act 1995, S.I. 1999/1820 and S.I. 2010/760. Section 6 was

(a) section 1 (size limits, etc for fish);

(b) section 2 (size limits for fish for use in course of any business);

(c) section 3 (regulation of nets and other fishing gear);

(d) section 4 (licensing of fishing boats);

(e) section 4A (licensing of vessels receiving trans-shipped fish);

(f) section 5 (power to restrict fishing for sea fish);

(g) section 6 (prohibition on landing of sea fish caught in certain areas);

(h) section 8 (regulation of landing of foreign-caught sea fish).

3. An offence under section 5 of the Sea Fisheries Act 1968(**1**) (regulation of conduct of fishing operations).

4. An offence under section 2 of the Fishery Limits Act 1976(**2**) (access to British fisheries).

5. An offence under section 30 of the Fisheries Act 1981(**3**) (enforcement of Community rules).

6. An offence under section 190 of the Marine and Coastal Access Act 2009(**4**) (offences).

7. An offence under regulations 3 to 11 of the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006(**5**).

8. An offence under article 9 of the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009(**6**).

9. In this Schedule, reference to a section includes subordinate legislation made under that section.

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amended by section 23 of the Fisheries Act 1981 and S.I. 1999/1820. Section 8 was amended by S.I. 1999/1820.

(**1**) 1968 c.77; section 5 was amended by section 4 of, and paragraph 3 of Schedule 1 and paragraph 17 of Schedule 2 to the Fishery Limits Act 1976, section 24 of the Fisheries Act 1981 and S.I. 1999/1820.

(**2**) Section 2 was amended by S.I. 1999/1820 and S.I. 2015/664.

(**3**) Section 30 was amended by section 293 of the Marine and Coastal Access Act 2009, S.I. 2011/1043 and S.I. 1999/1820.

(**4**) Section 190 was amended by S.I. 2015/664.

(**5**) S. I. 2006/1495.

(**6**) S. I. 2009/3391.

Explanatory Memorandum to the Sea Fishing (Penalty Notices) (Wales) 2019

This Explanatory Memorandum has been prepared by the Marine and Fisheries Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Sea Fishing (Penalty Notices) (Wales) 2019. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
26 February 2019

PART 1

Description

1. When the existing Order, Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 (SI 2008/984), was introduced it created a scheme whereby Financial Administrative Penalties (FAPs) could only be offered for EU offences against the Common Fisheries Policy (CFP).

2. This Order revokes and replaces the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 SI 2008/984. It introduces a revised scheme to allow FAPs to be offered in respect of offences under domestic legislation as well as those arising as a result of an enforceable community restriction or other obligations.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. None.

Legislative background

4. This Order is made in exercise of powers conferred by Section 30 of the Fisheries Act 1981 and Sections 294 and 316(1)(b) of the Marine and Coastal Access Act 2009.

5. The Order follows the negative resolution procedure, pursuant to Section 316(8) of the Marine and Coastal Access Act 2009.

Purpose and intended effect of the legislation

6. The FAP scheme for CFP offences has been in operation in England and Wales since 2008 pursuant to the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 (SI 2008/984). Since that time other UK Fisheries Administrations have conducted reviews of their own schemes and updated them where necessary to include domestic offences.

7. Section 294 of the Marine and Coastal Access Act 2009 now gives Welsh Ministers the powers to extend the use of FAPs for breaches of domestic sea fisheries legislation.

8. The introduction of FAPs for domestic offences will bring the system into line with the treatment of CFP offences, leading to a consistent and transparent system of sanctions for all fisheries offences in Wales.

9. It will allow Welsh Government Marine Enforcement Officers (MEOs) to offer FAPs in respect of some fisheries offences quickly and effectively without recourse to prosecution.

Consultation

10. A consultation ran from 5 December 2018 to 28 January 2019 on the proposals to extend the existing arrangements for issuing FAPs in respect of CFP offences to domestic fisheries offences.

11. The consultation was posted on the Welsh Government's website at: https://beta.gov.wales/consultations.

PART 2 – REGULATORY IMPACT ASSESSMENT

12. This Regulatory Impact Assessment relates to the new Sea Fishing (Penalty Notices (Wales) Order 2019. The new 2019 Order will repeal the existing Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 (S.I. 2008/984) which provides for a Financial Administration Penalty (FAP) scheme for EU Common Fishery Policy (CFP) offences only. The new 2019 Order would extend the FAP scheme to include breaches of domestic fisheries offences through application of powers available in section 294 and 316(1)(b) of the Marine and Coastal Access Act 2009.

13. Currently, the range of sanctions available for domestic fisheries offences are not as extensive as those available for offences under the CFP. Adding FAPs to the range of available sanctions would provide another mechanism for addressing domestic fisheries offences that warrant a sanction greater than a verbal or written warning but are not serious enough to justify, in terms of the public interest, a prosecution. The change would be in line with the Macrory recommendation to use administrative sanctions as an enforcement tool in regulatory regimes[1].

14. The introduction of the Welsh Government's extended FAP scheme would enable all fisheries offences in Wales to be addressed in a flexible, proportionate and consistent manner, providing an effective deterrent to those who consider breaching either domestic and/or CFP fisheries regulations. The introduction of the extended FAP scheme would also bring the regulation of domestic fisheries offences in Wales into line with other UK Fisheries Administrations.

Option 1 – Do Nothing

15. Currently, when an offence is detected, Marine Enforcement Officers (MEOs) have three options available to them, which are dependent on the severity of the offence:

    (i) **Issue a verbal warning** - A verbal warning is issued for a minor first offence.

    (ii) **Issue a written warning** – A written warning is the second stage in the process for a repeat minor offender or for someone committing a slightly more serious offence.

    (iii) **Proceed to prosecution** – The option of prosecution is for the most serious offences or considered for those who are repeat offenders. A case file is produced and a decision made to take the offender to court. This process can take up to one year before the case is brought before a Magistrate's Court. This is a costly and time consuming process.

[1] https://webarchive.nationalarchives.gov.uk/20121205164501/http://www.bis.gov.uk/files/file44593.pdf

16. Doing nothing is the baseline option and as such there are no **additional** costs and benefits associated with this option. Those fishermen taken to court incur costs in terms of legal fees, and loss of earnings due to interruption of fishing activities caused by having to attend court. The extent of preparation required for court cases is dependent upon the nature of the offence.

17. The current system offers no incentive for sustainability. During the time it currently takes for a case to proceed through the courts, there is a chance of transgressors continuing to reoffend.

18. In addition, some illegal fishing activities adversely and directly affect the livelihoods of fishing communities by undermining the stocks on which they depend. This can result in reduced economic security in communities heavily dependent on fishing as a source of employment.

19. Table 1 shows the number of infringements detected by Welsh Government since 2008 that have resulted in either a written warning or prosecution.

Table 1: Number of written warnings issued and prosecutions in Wales, 2008-2017

Number of prosecutions and written warnings to fishermen by Welsh Government		
Year	**Official Written Warnings**	**Prosecutions**
2018	6	27*
2017	1	11
2016	7	0
2015	3	3
2014	5	6
2013	5	3
2012	1	6
2011	5	7
2010	2	11
2009	6	0
2008	2	3

***The number of prosecutions in 2018 was in excess of what would normally be seen as the award of a new contract led to a build-up of case files.**

20. This option would provide no benefit in terms of improving enforcement and control measures in the conservation of fish stocks and the environment. It will have no effect on increasing compliance with fisheries regulations or reducing re-offending.

Option 2 – Introduce a system of FAPS for domestic fisheries offences

21. This option involves the introduction of a system of FAPs for domestic fisheries offences, using powers available under Section 294 of the Marine and Coastal Access Act 2009. This would mirror and complement the existing FAP scheme for CFP offences leading to a consistent and transparent system of sanctions for all fisheries offences and would bring enforcement of Welsh fisheries offences into line with other UK Fisheries Administrations.

22. This option would allow both the Welsh Government's Chief Officer Fisheries Operations (CO) and the Welsh Fisheries Monitoring Centre to issue FAPs to address some fisheries offences quickly and effectively without resorting to criminal prosecution. However, it would not remove the option of a court hearing either at the fisherman's or fisheries department's request, or the issue of an Official Written Warning where appropriate. Similarly, MEOs would still have the option to issue verbal and written advice for minor offences.

23. Discussions have taken place with Central Finance who have approved recycling of penalty receipts within the Marine and Fisheries BEL 2870, however discussions on the transactional element of the penalty process are ongoing. Ambit Income budget will be discussed during the first supplementary budget process.

Cost to businesses

24. All fishermen who commit relevant fisheries offences will be affected by these proposals. There will be no impact on those businesses/fishermen who continue to abide by the law.

25. Those fishermen who breach the applicable regulatory controls may experience an increase, decrease or no change in costs depending upon the circumstances and severity of their case. At this stage, it is difficult to predict how many FAPs will be issued or the number of court cases heard each year, however, based on the current number of written warnings and prosecutions (Table 1), the numbers are not expected to be large.

26. There may be an increase in costs for fishermen guilty of minor domestic infringements who would previously have expected to receive an Official Written Warning for offences not deemed serious enough to warrant a criminal prosecution. Under the new regime they may be eligible for a FAP ranging from £250 to £10,000, depending upon the offence and circumstances. If accepted the offender would be given 28 days in which to pay the FAP in full. If not paid during this period, the case will automatically be referred for prosecution.

27. There are potential cost-savings for those fishermen who commit an offence and are currently prosecuted through the courts but who may, in the future, be issued with a FAP instead. Court costs are varied and depend on the type of offence which has occurred. However, in most cases, the offender would experience a loss of earnings as a result of having to attend court and would also incur legal fees. If found guilty, the offender could receive a fine, incur costs and have to pay a victim surcharge. The offender would also have a criminal record. An offender may also lose their permit to fish in a particular area or for a particular species, which again will affect their ability to earn a living.

28. In more serious cases, offenders will continue to be prosecuted. In this scenario, there is not expected to be any change in the costs incurred by the business or enforcement body.

Cost to Government

29. The Marine & Fisheries Division of the Welsh Government will administer the schemes and will continue to carry out their enforcement activities as it currently does. MEOs will investigate and gather evidence on suspected offences, and present that evidence to the CFO with a recommendation to issue a penalty notice where appropriate and if they have evidence that a person has committed a relevant fisheries offence.

30. MEOs are not expected to require any additional training because they are already able to issue FAPs for EU CFP offences.

31. An additional cost will be incurred with the production of Guidance Notes for both officers and the public. This cost is expected to be minimal as existing guidance notes for a similar system in England will bewill be used as a template for the equivalent Welsh documents. Printing of the Guidance would also be undertaken in-house, therefore reducing the actual cost of production.

Benefit to fishing industry

32. Compared to prosecution, FAPs would speed up procedures for dealing with domestic infringements and reduce the administrative burdens and costs of legal representation for some non-compliant fishermen.

This includes:

- Reduction in time lost during court appearance
- Reduction in solicitor fees through avoiding court appearance
- Reduction in costs of fines payable to the courts if found guilty
- Faster conclusion of cases that would have previously been sent to the courts

33. The system would provide greater consistency in penalties for similar fisheries offences, thereby removing the uncertainty caused by wide variations of penalties imposed by different Magistrates' Courts.

34. Table 2 below shows examples of prosecution costs currently incurred by fishermen for breaches of domestic fisheries regulations. It has not been possible at this stage to include accurate estimates of savings to fishermen due to this policy option.

Table 2: Examples of prosecution costs

Year of Court Hearing	Prosecution Fines (£)	Costs of Prosecution (£)
2018	163,644	40,742
2017	12,621	9,269
2016	101,907	23,105
2015	4,000	2,000
2014	76,355	17,411
2013	4,250	2,495
2012	97,750	23,700
2011	63,000	5,414
2010	48,000	5,887
2009	2,440	1,100
2008	26,000	2,473

35. In addition to potential savings, there is a potential non-monetary benefit in that offenders can avoid the stigma of a criminal record by accepting a FAP as an alternative to court proceedings.

36. The introduction of FAPs for domestic offences is expected to act as a deterrent against illegal fishing activity, helping to maintain a level playing field for compliant businesses/fishermen.

Benefits to Government

37. The ability to control fishing practices effectively has a significant impact on the marine environment. The FAP system is expected to increase compliance with fisheries regulations.

38. It will become apparent to potential offenders that in place of warnings (verbal and written) and criminal prosecutions, many fisheries infringements will be dealt with by the swift imposition of penalties for infringements. This should increase compliance with all fisheries and conservation regulations, and therefore protect fishery stocks, particularly those which may be subject to stock recovery measures.

39. FAPs are also expected to offer MEOs a more cost-effective means of addressing certain infringements. With the introduction of FAPs, MEOs

would still be required to complete a full case file, therefore there would be no direct saving in officer time (see Table 3). However, if a FAP was offered and accepted, this would reduce the need for further MEO time to be expended on court proceedings.

40. If a case proceeds to court, Welsh Government have to pay the fees of external prosecuting solicitors. If a defendant is convicted, Magistrates often award prosecution costs. However this is not guaranteed. An award of full costs may be dependent on the nature and severity of the offence. If a FAP were accepted by an offender, it would avoid this cost to Welsh Government.

Table 3: Estimated cost of current enforcement:

Infringement Type	Hours	Estimated total cost
Low level	2-5	+£200
Medium level	10-20	+ £3,000
High level	30 +	+ £8,000

41. Finally, the introduction of FAPS would bring the enforcement of fisheries offences into line with other UK Fisheries Administrations.

Summary of the preferred option

42. The preferred option is to introduce a system of FAPs for domestic fisheries offences, including inshore fisheries byelaw offences, using powers available under Sections 294 and 316(1)(b) of the Marine and Coastal Access Act 2009. This will provide MEOs with an additional tool to address fisheries offences in a timely and proportionate way.

Consultation

43. The consultation was drawn to the attention of key stakeholders including members of the Wales Marine Fisheries Advisory Group (WMFAG) and those on the Stakeholder Register.

44. The consultation ran from 5 December 2018 to 28 January 2019.

45. A total of 13 responses were received. Twelve of these were partial, incomplete responses; one was completed without comment. No objections were put forward.

46. There are no changes to the legislation as a result of the consultation.

Competition Assessment

The competition filter test	
Question	**Answer yes or no**
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The Regulations are not expected to have an impact on competition in Wales or the competitiveness of Welsh businesses.

SL(5)357 – The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019
Background and Purpose

This instrument is made under section 2(2) of the European Communities Act 1972 and paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union Withdrawal Act 2018.

The Regulations amend the Seed Marketing (Wales) Regulations 2012 and the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017. The instrument amends (in Part 2) those two sets of Regulations within 21 days of laying and, therefore, before Exit Day. Those amendments are made under the provisions of the 1972 Act. They introduce references to the EEA and Switzerland.

The instrument then makes further amendments to those two sets of Regulations (in Part 3) which will take effect on exit day. Those amendments are made under the 21018 Act.

The provisions make technical changes to ensure that the two sets of Regulations being amended will continue to be operable in Wales after the UK leaves the EU.

Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

As regards Standing Order 21.2(vii), the Welsh text incorrectly numbers the Regulations from 2-6 (instead of numbering them from 1-5). Further, at the end of Regulation 17, in the Welsh text, there appears-

"(c)"

Presumably, this is a typographical error.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3(ii)

Implications arising from exiting the European Union

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

Government Response

The Welsh Government notes and accepts the matters contained in the report. The errors are typographical and will be rectified as soon as practicable. Pending rectification, the errors can be addressed by the issue of a correction slip.

Legal Advisers
Constitutional and Legislative Affairs Committee
8 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 368 (W. 90)

EXITING THE EUROPEAN UNION, WALES

SEEDS, WALES

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

The Regulations also (in exercise of the powers conferred by the European Communities Act 1972 (c.68)) make amendments to the Seed Marketing Regulations (Wales) 2012 to include references to EEA states and Switzerland where appropriate.

These Regulations make amendments to subordinate legislation, which apply in relation to Wales, in the fields of seeds and the marketing of fruit plant propagating material and fruit plants intended for fruit production.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2019 No. 368 (W. 90)

EXITING THE EUROPEAN UNION, WALES

SEEDS, WALES

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019

Sift requirements satisfied *18 February 2019*

Made *25 February 2019*

Laid before the National Assembly for Wales *27 February 2019*

Coming into force in accordance with regulation 1

The Welsh Ministers make these Regulations in exercise of the powers conferred—

(a) in relation to Part 1, by the powers referred to in paragraphs (b) and (c);

(b) in relation to Part 2, by section 2(2) of the European Communities Act 1972(**1**);

(c) in relation to Part 3, by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(**2**).

(**1**) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7). It is prospectively repealed by the European Union (Withdrawal) Act 2018 (c. 16), section 1 from exit day (*see* section 20 of that Act). The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Welsh Ministers by S.I. 1999/672.

(**2**) 2018 c.16.

The Welsh Ministers are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy.

The requirements of paragraph 4(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate National Assembly for Wales scrutiny procedure for these Regulations) have been satisfied.

PART 1

Introductory

Title, commencement and application

1.—(1) The title of these Regulations is the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019.

(2) These Regulations come into force as follows—

(a) as regards this Part and Part 2, 21 days after the day on which these Regulations are laid;

(b) as regards Part 3, on exit day.

(3) These Regulations apply in relation to Wales.

PART 2

Amendment of references in secondary legislation

The Seed Marketing (Wales) Regulations 2012

2.—(1) The Seed Marketing (Wales) Regulations 2012(**2**) are amended as follows.

(2) In regulation 3(1), after sub-paragraph (b), insert—

"(c) "European Single Market State" ("*Gwladwriaeth y Farchnad Sengl Ewropeaidd*") means an EEA state or Switzerland.".

(3) In Schedules 3 and 4, for "member State", in each place where it occurs, substitute "European Single Market State";

(4) In Schedule 4—

(a) in paragraph 10, after sub-paragraph (6) insert—

(**1**) S.I. 2010/2690.

(**2**) SI 2012/245 (W.39), amended by SI 2013/889 (W.101), 2014/519 (W.61), 2016/1242 (W.294) and 2017/1095 (W.276).

"(7) Seed of an unlisted variety which is the subject of an authorisation issued by another EEA State in accordance with Commission Decision 2004/842/EC(**1**) may be marketed in Wales for the purpose of gaining knowledge and practical experience during cultivation.

(8) Seed marketed under sub-paragraph (7) must be labelled in accordance with Article 28 of Commission Decision 2004/842/EC.";

(b) in paragraph 14, at the end insert ", except for vegetable seed of the species listed in Council Directive 2002/55/EC(**2**) produced in Switzerland".

The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017

3.—(1) The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017(**3**) are amended as follows.

(2) In regulation 11(7), for "Plant Health (Wales) Order 2006" substitute "Plant Health (Wales) Order 2018(**4**)".

PART 3

Amendment of secondary legislation relating to the withdrawal from the European Union

The Seed Marketing (Wales) Regulations 2012

4.—(1) The Seed Marketing (Wales) Regulations 2012 are amended as follows.

(2) In regulation 3(1), after sub-paragraph (c), insert—

"(d) "country granted equivalence" ("*gwlad y caniatawyd cywerthedd iddi*") means a country that has been granted equivalence under Council Decision 2003/17/EC on the equivalence of field inspections carried out in third countries on seed-producing crops and on the equivalence of seed produced in third countries;

(e) "Crown Dependency" ("*Tiriogaeth Ddibynnol y Goron*") means any of the Channel Islands or the Isle of Man."

(**1**) OJ L 362 9.12.2004, p. 21.
(**2**) OJ L 193 20.7.2002, p. 33.
(**3**) S.I. 2017/691 (W.163).
(**4**) S.I. 2018/1064 (W.223).

(3) In regulation 4(2), for "European Union" substitute "United Kingdom".

(4) In regulation 7, for "the Common Catalogue" substitute "an equivalent list in a country referred to in the Annex to Council Decision 2005/834/EC on the equivalence of checks on practices for the maintenance of varieties carried out in certain third countries".

(5) After regulation 8 insert—

"**Marketing of seed from a European Single Market State**

8A.—(1) No person may market seed to which these Regulations apply which has been produced in a European Single Market State.

(2) Paragraph (1) does not apply to seed which meets the conditions specified in paragraph (3).

(3) The conditions are that the seed—

(a) is of a variety listed in the United Kingdom National List or the Common Catalogue;

(b) is not vegetable seed of the species listed in the definition of "vegetables" in Article 2(1)(b) of Council Directive 2002/55/EC which is produced in Switzerland;

(c) has been produced in compliance with the requirements set out in EU law including the Council Directives referred to in regulation 3(2)(a) to (e) and (i); and

(d) has been imported into Wales before the end of the period of two years beginning with the day after the day on which exit day falls.

(6) In regulation 10, in paragraph (a), for the words from "variety" to the end substitute—

"variety—

(i) entered in the United Kingdom National List; or

(ii) entered in the Common Catalogue at any time before the end of the period of two years beginning with the day after the day on which exit day falls;".

(7) For regulation 21A, substitute—

"**21A.**—(1) The Welsh Ministers may by licence exempt any person or class of person from compliance with any provision of these Regulations for the purposes of a temporary experiment seeking improved alternatives to

provisions of these Regulations and organised in accordance with regulations made under section 16(5) of the Plant Varieties and Seeds Act 1964(**1**).

(2) The duration of an experiment must not exceed 7 years.".

(8) In regulation 26, omit "outside the European Union".

(9) In regulation 27—

(a) in the heading and in paragraph (1), for "from outside the European Union" substitute "into the United Kingdom";

(b) in paragraph (3), for "from a third country" substitute "into the United Kingdom ";

(c) after paragraph (3) insert—

"(4) Paragraphs (1) and (3) do not apply to seed imported from a European Single Market State before the end of the period of two years beginning with the day after the day on which exit day falls.".

(10) After regulation 32, insert—

"**Certification in a Crown Dependency**

32A. Any seed certified and labelled in a Crown Dependency under legislation recognised by the Welsh Ministers to have equivalent effect to these Regulations may be marketed in Wales.

Transitional provision for official labels on exit day

32B. For the purposes of regulation 17 and paragraphs 7(1)(a) and 8(1)(a) of Schedule 3, an official label pre-printed before exit day containing the statement "EU Rules and Standards" may be used as an official label before the end of the period of two years beginning with the day after the day on which exit day falls.".

(11) In Schedule 2—

(a) in paragraph 7—

(i) in sub-paragraph (1), after "Article 2(3)(A)", insert "(a) to (d)";

(ii) in sub-paragraph (3), for "Annex III to that Directive" substitute "Schedule 3";

(iii) after sub-paragraph (5), insert—

(**1**) 1964 c.14.

"(6) For the purposes of this regulation, Council Directive 2002/54/EC is to be read as if—

(a) in Article 2(3)(A)(a)(iii), for "officially licensed by the seed certification authority of the Member State concerned" there were substituted "licensed by the Welsh Ministers";

(b) in Annex 1—

(i) in point A—

(aa) in paragraph 3, for "certification authority" there were substituted "Welsh Ministers";

(bb) in the last paragraph, for the words from "common" to "that Directive" there were substituted "United Kingdom National List";

(ii) in point B, in paragraph 3(c)—

(aa) the reference to "Member States" were a reference to "The Welsh Ministers";

(bb) the reference to "Community" were omitted.".

(b) in paragraph 15—

(i) in sub-paragraph (1), after "Article 2(3)(A)", insert "(a) to (d)";

(ii) in sub-paragraph (2), after "that Directive", in the first place where it occurs, insert " (except paragraphs 1a(f) and 1b of Article 7)";

(iii) after sub-paragraph (2), insert—

"(2A) For the purposes of sub-paragraphs (1) and (2), Council Directive 66/402/EEC is to be read as if—

(a) in Article 2(3)(A)(a)(iii), for "officially licensed by the seed certification authority of the Member State concerned" there were substituted "licensed by the Welsh Ministers";

(b) in Article 7—

(i) references to "Member States" were references to "Welsh Ministers";

(ii) in paragraph 1a(a), for "seed certification authority of the Member State concerned" there were substituted "Welsh Ministers".".

(c) in paragraph 28—

(i) in sub-paragraph (1), after "Article 2(3)(A)", insert "(a) to (d)";

(ii) after sub-paragraph (1), insert—

"(1A) For the purposes of sub-paragraph (1), Council Directive 66/401/EEC is to be read as if—

(a) in Article 2(3)(A)(a)(iii), for "officially licensed by the seed certification authority of the Member State concerned" there were substituted "licensed by the Welsh Ministers";

(b) in Annex 1, in paragraph 4, in the second sub-paragraph, the words from "Upon" to the end were omitted.".

(d) in paragraph 42—

(i) in sub-paragraph (1), after "Article 2(5)(A)", insert "(a) to (d)";

(ii) after sub-paragraph (1), insert—

"(1A) For the purposes of sub-paragraph (1), Council Directive 2002/57/EC is to be read as if—

(a) in Article 2(5)(A)(a)(iii), for "officially licensed by the seed certification authority of the Member State concerned" there were substituted "licensed by the Welsh Ministers";

(b) in Annex 2, in Part 1, in paragraph 5C, the last sub-paragraph were omitted.".

(e) in paragraph 43(2), omit " or the Common Catalogue";

(f) in paragraph 50—

(i) in sub-paragraph (1), after "Article 2(4)(A)" insert "(a) to (d)";

(ii) in sub-paragraph (2), after "Article 25", insert " (except paragraphs 1a(f) and 1b)";

(iii) after sub-paragraph (2), insert—

"(2A) For the purposes of sub-paragraphs (1) and (2), Council Directive 2002/55/EC is to be read as if—

(a) in Article 2(4)(A)(a)(iii), for "officially licensed by the seed certification authority of the Member State concerned" there were substituted "licensed by the Welsh Ministers";

(b) in Article 25—

(i) references to "Member States" were references to "Welsh Ministers";

(ii) in paragraph 1a(a), for "seed certification authority of the Member State concerned" there were substituted "Welsh Ministers".".

(12) In Schedule 3—

(a) in paragraph 5(5), for the words from "one of" to the end substitute "English, but may also be in other languages";

(b) in paragraph 6(1)—

(i) in paragraph (a), after "the name", insert " and country or country initials";

(ii) omit paragraph (b);

(c) in paragraphs 7(1) and 8(1)—

(i) in paragraph (a), for "EU" substitute "UK";

(ii) in paragraph (b), after "the name", insert "and country or country initials";

(iii) omit paragraph (c);

(d) in paragraph 9(1)—

(i) in paragraph (a), at the beginning, insert "the name and country or country initials of";

(ii) omit paragraph (b);

(e) in paragraphs 12(2)(a) and 14(1)(a), for "or the Common Catalogue" substitute ", or has been accepted onto the Common Catalogue and the seed is marketed before the end of the period of two years beginning with the day after the day on which exit day falls";

(f) in paragraph 19—

(i) in sub-paragraph (2), omit "EU";

(ii) in sub-paragraph (2), omit "*UE*";

(iii) in sub-paragraph (4)—

(aa) in paragraph (a), omit "EU";

(bb) in paragraph (e), for "European Single Market State" substitute "country of production";

(g) in paragraph 20(4)(a), for "EU" substitute "UK";

(h) in paragraphs 21 and 22, omit "EU" in each place where it occurs;

(i) in paragraph 23—

(i) omit "EU" in each place where it occurs;

(ii) in sub-paragraphs (2)(c)(ii) and (d)(iii), for "European Single Market State" substitute "country of production";

(j) in paragraphs 24 and 25, for "EU", in each place where it occurs, substitute "UK".

(13) In Schedule 4—

(a) in paragraph 4(1), for "the Directive" substitute "these Regulations";

(b) in paragraph 5(2), for "from a third country" substitute "into the United Kingdom";

(c) in paragraph 6, for "Council Directive 66/402/EEC" substitute "these Regulations";

(d) in paragraph 7—

(i) after sub-paragraph 5, insert—

"(5A) For the purposes of sub-paragraph (5)—

(a) Article 14 of Commission Directive 2008/62/EC is to be read as if—

(i) in the first paragraph—

(aa) the words "Each Member State shall ensure that, " were omitted;

(bb) for the reference to "that Member State" there were substituted "the United Kingdom";

(ii) in the second paragraph—

(aa) the words "in each Member State" were omitted;

(bb) for the references to "the Member State", in both places where it occurs, there were substituted "the United Kingdom";

(b) Article 15 of Commission Directive 2009/145/EC is to be read as if—

(i) the words "Each Member State shall ensure that," were omitted;

(ii) for "does" there were substituted "must".";

(ii) in sub-paragraph (7), for the words from "Council Directive 2002/54/EC" to "(as the case may be)" substitute "these Regulations";

(iii) in sub-paragraph (8)—

(aa) in paragraph (a), for the words from "Council Directive 2002/55/EC" to "seed" substitute "Schedule 2";

(bb) in paragraph (b), for "that Directive" substitute "these Regulations";

(e) in paragraph 8—

(i) in sub-paragraph (3)(b), for the words from "in accordance" to the end substitute "having taken account of any available

information from plant genetic resource organisations";

(ii) in sub-paragraph (4)(a), for "EU" substitute "UK";

(iii) in sub-paragraph (7), after "have", in the first place where it occurs, insert "subject to sub-paragraph (8)";

(iv) after sub-paragraph (7) insert—

"(8) For the purposes of this paragraph, Article 1(a) of Commission Directive 2010/60/EU is to be read as if the definition of "source area" contained in that Article defined it to mean an area designated as a special area of conservation or an area contributing to the conservation of plant genetic resources in accordance with retained EU law.";

(f) in paragraph 10—

(i) in sub-paragraph (1), omit the words from "of at least" to the end;

(ii) in sub-paragraph (7)—

(aa) at the beginning insert "Subject to sub-paragraph (9),";

(bb) for "another" substitute "an";

(iii) after sub-paragraph (8) insert—

"(9) Seed marketed under sub-paragraph (7) must be marketed before the end of the period of two years beginning with the day after the day on which exit day falls.".

(g) in paragraph 11(2), omit "or the Common Catalogue";

(h) in paragraph 12—

(i) the existing text becomes sub-paragraph (1);

(ii) in sub-paragraph (1)—

(aa) in the words before paragraph (a), omit "been authorised for cultivation under either";

(bb) in paragraph (a), at the beginning, insert "before the day on which exit day falls, been authorised under", and, at the end, omit "or";

(cc) in paragraph (b), at the beginning, insert "been authorised under", and, at the end, insert ", or";

(dd) after paragraph (b), insert—

"(c) been authorised under the GMO Regulations.

(2) For the purpose of paragraph (1), "the GMO Regulations" means—

(a) in relation to Wales, the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002(**1**);

(b) in relation to England, the Genetically Modified Organisms (Deliberate Release) Regulations 2002(**2**);

(c) in relation to Scotland, the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002(**3**);

(d) in relation to Northern Ireland, the Genetically Modified Organisms (Deliberate Release) Regulations (Northern Ireland) 2003(**4**).";

(i) in paragraph 13—

(i) in sub-paragraph (1), for "another European Single Market State or third country" substitute "a country granted equivalence";

(ii) in sub-paragraph (3)—

(aa) omit paragraph (a);

(bb) in paragraph (b), omit "if the seed is from a third country";

(cc) in the words after paragraph (b), omit "in both cases";

(j) omit paragraph 14 and its heading;

(k) in paragraph 15(3), for "Council Directive 2002/55/EC on the marketing of vegetable seed" substitute "these Regulations";

(l) in paragraph 16—

(i) in the heading, for "another" substitute "a";

(ii) in sub-paragraph (1)—

(aa) for "Seed" substitute "Before the end of the period of two years beginning with the day on which exit day falls, seed";

(bb) in paragraph (a)(i), for the words from "either" to the end substitute "in a European Single Market State or a country granted equivalence";

(**1**) S.I. 2002/3188 (W.304), amended by S.I. 2005/1913 (W.156), 2005/2759, 2011/1043, 2013/755 (W.90), 2018/1216 (W.249).

(**2**) S.I. 2002/2443, as amended by S.I. 2004/2411, 2005/2759, 2009/1892, 2011/1043, 2018/575.

(**3**) S.S.I. 2002/541, amended by S.I 2005/2759 and 2011/1043; and by S.S.I 2004/439, 2015/100.

(**4**) S. R. 2003 No. 167.

(cc) in paragraph (a)(ii), for "such a third country" substitute "a country granted equivalence";

(dd) in paragraph (b), for "another" substitute "a";

(iii) in sub-paragraph (3)(a), for "European Single Market State" substitute "country";

(m) in paragraph 17—

(i) in the heading and, in sub-paragraph (1), in the words before paragraph (a), for "third country" substitute "country granted equivalence";

(ii) in sub-paragraph (1)(a)(i), for the words from "a European Single Market State" to the end, substitute "the United Kingdom, a Crown Dependency (provided such seed has been produced under legislation recognised by the Welsh Ministers to have equivalent effect to these Regulations) or a country granted equivalence";

(iii) for sub-paragraph (1)(a)(ii), substitute—

"(ii) the crossing of basic seed officially certified in the United Kingdom or a Crown Dependency (provided such seed has been produced under legislation recognised by the Welsh Ministers to have equivalent effect to these Regulations) with basic seed certified in a country granted equivalence;";

(n) in paragraph 18, omit "or the Common Catalogue".

The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017

5.—(1) The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 are amended as follows.

(2) In regulation 2—

(a) in the definition of "basic material", in paragraph (b), for " Article 15 of Directive 2014/98/EU;" substitute

"—

(i) in the case of material produced in the United Kingdom, the relevant fruit marketing regulations;

(ii) in the case of material produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to regulation 9(1) and (2);

(iii) in the case of material produced in a member State, Article 15 of Directive 2014/98/EU;";

(b) in the definition of "CAC material", in paragraph (b), for " Article 23 of Directive 2014/98/EU;" substitute—

"—

(i) in the case of material and plants produced in the United Kingdom, the relevant fruit marketing regulations;

(ii) in the case of material and plants produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to Schedule 1;

(iii) in the case of material and plants produced in a member State, Article 23 of Directive 2014/98/EU;";

(c) in the definition of "certified material", in paragraph (b), for " Article 20 of Directive 2014/98/EU;" substitute—

"—

"(i) in the case of material and plants produced in the United Kingdom, the relevant fruit marketing regulations;

(ii) in the case of material and plants produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to regulation 9(1) and (2);

(iii) in the case of material and plants produced in a member State, Article 20 of Directive 2014/98/EU;";

(d) in the appropriate place insert—

""Crown Dependency" ("*Tiriogaeth Ddibynnol y Goron*") means the Isle of Man or any of the Channel Islands;";

(e) in the appropriate place insert—

""the fruit marketing regulations" ("*y rheoliadau marchnata ffrwythau*") means—

(a) as regards England, the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017(**1**);

(**1**) S.I. 2017/595.

(b) as regards Scotland, the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017(**1**);

(c) as regards Northern Ireland, the Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017(**2**)—

and "the relevant fruit marketing regulations" ("*y rheoliadau marchnata ffrwythau perthnasol*"), in relation to any constituent part of the United Kingdom, means the fruit marketing regulations applicable in relation to that part;;

(f) in the definition of "official label", in paragraph (b), for the words " Article 2 of Directive 2014/96/EU;" substitute—

"—

(i) in the case of material produced in the United Kingdom, the relevant fruit marketing regulations;

(ii) in the case of plant material produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to Part 1 of Schedule 2;

(iii) in the case of plant material produced in a member State, Article 2 of Directive 2014/96/EU;
";

(g) in the definition of "outside Wales", for the words from " or any member" to the end, substitute ", any member State or any Crown Dependency";

(h) in the definition of "plant variety rights"—

(i) in paragraph (a), at the end insert "or";

(ii) omit paragraph (b).

(i) in the definition of "pre-basic material", in paragraph (b), for " Articles 3 or 4 of Directive 2014/98/EU;" substitute—

"—

(i) in the case of material produced in the United Kingdom, the relevant fruit marketing regulations;

(ii) in the case of material produced in a Crown Dependency, legislation recognised by the Welsh Ministers

(**1**) S.S.I. 2017/177.
(**2**) S.R. 2017 No.119.

as having equivalent effect to regulation 9(1) and (2);

(iii) in the case of material produced in a member State, Articles 3 or 4 of Directive 2014/98/EU;".

(3) In regulation 4(3), for "European Union" substitute "United Kingdom".

(4) After regulation 5(4) insert—

"(5) No person may market in Wales plant material produced in a member State.

(6) Paragraph (5) does not apply to plant material which meets the conditions set out in paragraph (7).

(7) The conditions are that the plant material—

(a) is of a variety that may be marketed under regulation 7 or has been registered as a variety by the responsible authority in a member State in accordance with Article 4 of Directive 2014/97/EU;

(b) has been produced in compliance with the requirements set out in Directives 2008/90/EC, 2014/98/EU and 2014/96/EU; and

(c) has been imported into Wales before the end of the period of two years beginning with the day after the day on which exit day falls.".

(5) In regulation 7—

(a) in paragraph (3), for the words from "the second" to the end substitute "that paragraph";

(b) in paragraph (4), for sub-paragraph (b) substitute—

"(b) registration as a variety by the responsible authority in any part of the United Kingdom outside Wales in accordance with—

(i) in relation to England, Schedule 4 to the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017;

(ii) in relation to Scotland, Schedule 4 to the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017;

(iii) in relation to Northern Ireland, Schedule 3 to the Marketing of Fruit Plant and Propagating Material (Northern Ireland) Regulations 2017.".

(6) In regulation 10(6), for "Directive 2000/29/EC" substitute "the Plant Health (Wales) Order 2018".

(7) In regulation 15(1)(g)(iii), for "Annexes to Directive 2000/29/EC" substitute "Plant Health (Wales) Order 2018".

(8) After regulation 28 insert—

"Transitional provision for official labels on exit day

28A. For the purposes of regulation 10 and paragraph 4(b) of Schedule 2, an official label pre-printed before exit day containing the statement "EU Rules and Standards" may be used as an official label for plant material before the end of the period of two years beginning with the day after the day on which exit day falls.".

(9) In Schedule 2—

(a) in paragraph 4(b), for "EU" substitute "UK";

(b) in paragraph 5, for "indelibly printed" to the end substitute—

"—

(a) easily visible and legible, and

(b) indelibly printed in English (but may also be printed in other languages)";

(c) in paragraph 8—

(i) in sub-paragraph (a), for "EU" substitute "UK";

(ii) in sub-paragraphs (b)(i) and (x), for "member State" substitute "country";

(d) in paragraph 9, for "indelibly printed" to the end substitute—

"—

(a) easily visible and legible, and

(b) indelibly printed in English (but may also be printed in other languages)".

(10) Schedule 4 is amended in accordance with paragraphs 11 to 16.

(11) In paragraph 1—

(a) in the definition of "appropriate protocol"—

(i) omit paragraph (a);

(ii) in paragraph (b)—

(aa) omit the words from "where" to "species, ";

(bb) after the word "stability" insert "for the particular genus or species concerned";

(iii) in paragraph (c)—

(aa) omit "protocols mentioned at (a) or ";

(bb) after the word "established" insert "or recognised";

(b) in the appropriate place insert—

""the GMO Regulations" ("*y Rheoliadau GMO*") means—

(a) in relation to Wales, the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002(**1**);

(b) in relation to England, the Genetically Modified Organisms (Deliberate Release) Regulations 2002(**2**);

(c) in relation to Scotland, the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002(**3**);

(d) in relation to Northern Ireland, the Genetically Modified Organisms (Deliberate Release) Regulations (Northern Ireland) 2003(**4**);".

(12) In paragraph 2—

(a) in sub-paragraph (2)(b), omit "or in another member State, ";

(b) in sub-paragraph (3), for "member State" substitute "country which is a member of UPOV".

(13) In paragraph 3—

(a) in sub-paragraph (1)(c), for the words from "is authorised" to the end substitute—

"—

(i) is authorised for cultivation pursuant to Regulation (EC) No 1829/2003 or the GMO Regulations, or

(ii) before the day on which exit day falls has been authorised for cultivation pursuant to Directive 2001/18/EC.";

(b) in sub-paragraph (3), for "outside Wales" substitute "elsewhere in the United Kingdom or in another country which is a member of UPOV".

(14) In paragraph 6(1)—

(**1**) S.I. 2002/3188 (W.304), amended by S.I. 2005/1913 (W.156), 2005/2759, 2013/755 (W.90), 2018/1216 (W.249).

(**2**) S.I. 2002/2443, as amended by S.I.2004/2411, 2005/2759, 2009/1892, 2011/1043, 2018/575.

(**3**) S.S.I 2002/541, amended by S.S.I 2004/439, 2015/100 and S.I. 2005/2759 and 2011/1043.

(**4**) S.R. 2003 No 167.

(a) in paragraph (c), for "or in another member State" substitute "; or";

(b) after paragraph (c) insert—

"(d) by a competent authority outside the United Kingdom if the Welsh Ministers are satisfied that those growing trials are of equivalent standards to those carried out by or on behalf of the Welsh Ministers.".

(15) In paragraph 7—

(a) in sub-paragraph (1)(a), for the words "consists is" to the end substitute—

"consists—

(i) is authorised for cultivation pursuant to Regulation (EC) No 1829/2003(**1**) or the GMO Regulations, or

(ii) has, before the day on which exit day falls, been authorised for cultivation pursuant to Directive 2001/18/EC; or";

(b) in sub-paragraph (4)(a), omit "Directive 2001/18/EC or ".

(16) In paragraph 8(1)(d), for the words from "ceases" to the end substitute—

"—

(i) ceases to be authorised pursuant to Regulation (EC) No 1829/2003 or the GMO Regulations; or

(ii) has, before the day on which exit day falls, been authorised for cultivation pursuant to Directive 2001/18/EC and ceases to be authorised".

(17) In Schedule 5—

(a) in paragraph 5—

(i) in sub-paragraph (4)(a), for "outside Wales" substitute "in any part of the United Kingdom other than Wales or in another country which is a member of UPOV";

(ii) in sub-paragraph (7), for the definition of "register of varieties" substitute—

""register of varieties" ("*cofrestr amrywogaethau*") means, in relation to the registration of varieties, the register maintained—

(a) in Wales, under paragraph 4(1) of Schedule 4;

(**1**) Defined in paragraph 1 of Schedule 4 to S.I. 2017/691 (W.163).

(b) in England, under paragraph 4(1) of Schedule 4 to the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017;

(c) in Scotland, under paragraph 2(1) of Schedule 4 to the Marketing of Fruit Plant and Propagating Material (Scotland) 2017;

(d) in Northern Ireland, for the purposes of paragraph 1 of Schedule 3 to the Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017;";

(b) omit paragraph 8(2)(a).

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers
25 February 2019

Explanatory Memorandum to The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
27 February 2019

1 PART 1

1. Description

1.1 This instrument makes amendments to the Seed Marketing Regulations (Wales) 2012 and the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017. It addresses deficiencies in domestic legislation on the marketing of seeds and fruit plant and propagating material arising from the withdrawal of the United Kingdom from the European Union so that such will continue to be operable after EU exit.

1.2 This instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 defines as 29 March 2019 at 11.00pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) (the "2018 Act") in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

2.2 It also (in exercise of the powers conferred by the European Communities Act 1972 (c.68)) makes amendments to the Seed Marketing Regulations (Wales) 2012 to include references to EEA states and Switzerland where appropriate.

2.3 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to the negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment. 1.1

2.4 The CLA Committee considered a draft of these regulations on 18 February 2019, and agreed that the negative procedure is appropriate for these regulations. A copy of the published CLA report can be accessed via the following link: http://www.assembly.wales/laid%20documents/cr-ld12192/cr-ld12192-e.pdf

3. Legislative background

3.1 This instrument is being made using the power in Part 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant

statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The marketing of seed and plant propagating material is regulated at Community level by EU Directive. The directives prescribe processes to ensure minimum quality standards and traceability. The directives also set out administrative provisions (including, where appropriate, provision for fees), impose record-keeping requirements and provide for the licensing of crop inspectors, seed samplers and seed testing stations.

4.2 This instrument makes amendments to the Seed Marketing Regulations (Wales) 2012 and the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017.

4.3 The Seed Marketing Regulations (Wales) 2012 implement;

- Council Directive 66/401/EEC on the marketing of fodder plant seed
- Council Directive 66/402/EEC on the marketing of cereal seed
- Council Directive 2002/54/EC on the marketing of beet seed
- Council Directive 2002/55/EC on the marketing of vegetable seed
- Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants
- Commission Directive 2009/74/EC amending Council Directives 66/401/EEC, 66/402/EEC, 2002/55/EC and 2002/57/EC as regards the botanical names of plants, the scientific names of other organisms and certain Annexes to Directives 66/401/EEC, 66/402/EEC and 2002/57/EC in the light of developments of scientific and technical knowledge
- Commission Directive 2010/60/EU providing for certain derogations for marketing of fodder plant seed mixtures intended for use in the preservation of the natural environment
- Commission Decision 2011/180/EU implementing Council Directive 2002/55/EC as regards conditions under which the placing on the market of small packages of mixtures of standard seed of different vegetable varieties belonging to the same species may be authorised
- Commission Directive 2008/62/EC providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties; and
- Commission Directive 2009/145/EC providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties.

4.4 To comply with the Seed Marketing Regulations, and in order to market the main varieties of agricultural crops or vegetables in Wales, a person must hold a licence to market seed and have successfully applied to

have seed certified to show the seed meets EU quality standards. A person is considered to be marketing seed if they are holding or keeping them before sale; offering them for sale e.g.: by advertising; giving them to someone else; packing, sealing or labelling seed; processing seed; or collecting and preparing preservation mixtures of seed.

4.5 The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 implement;

- Council Directive 92/34/EEC on the marketing of fruit plant propagating material and fruit plants intended for fruit production
- Commission Directive 93/48/EEC setting out the schedule indicating the conditions to be met by fruit plant propagating material and fruit plants intended for fruit production, pursuant to Council Directive 92/34/EEC
- Commission Directive 93/79/EEC 93/79/EEC setting out additional implementing provisions for lists of varieties of fruit plant propagating material and fruit plants, as kept by suppliers under Council Directive 92/34/EEC

4.6 The Regulations set quality standards to be met by certain genera and species of fruit plant material when marketed and prescribe conditions to be satisfied by suppliers of fruit plant material. Suppliers may not market plant material unless it is substantially free on visual inspection from harmful organisms and diseases and unless it satisfies minimum quality requirements. Producers are required to take certain measures if such organisms and diseases are found. Fruit plant material must be marketed with reference to the variety to which it belongs or, in the case of rootstocks which do not belong to a variety, to the appropriate species or interspecific hybrid.

Why is it being changed?

4.7 This instrument amends provisions in The Seed Marketing (Wales) Regulations 2012 and The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 which are inappropriate or redundant as a result of the withdrawal of the UK from the EU and makes appropriate changes to these regulations to ensure that the law functions correctly after exit.

What will it now do?

4.8 The changes made by this instrument are necessary to ensure that current legislation for seed marketing and fruit propagating material continues to operate effectively after the UK leaves the EU in a “no deal” scenario. The amendments do not amount to changes in policy and will not have a substantive impact on current marketing practices or standards. The instrument remedies deficiencies that will arise in domestic marketing legislation for example by removing references to the Commission, Community and Member States, replacing references

to “third countries” and removing reporting obligations to the Commission.

4.9 In order to guarantee supplies of seed on which the UK is currently dependent, the instrument provides for a temporary two year period during which time supplies of certified seed from a European Single Market State may continue to be marketed in the UK. To avoid financial loss to UK seed merchants, the instrument also provides a temporary two year interim period to allow existing stocks of pre-printed EU certification labels to be used up.

4.10 This instrument amends the Seeds Marketing Regulations 2011 using powers under section 2(2) of the European Communities Act to include references to the European Economic Area States and Switzerland were appropriate.

4.11 Three other EU Exit Sis have been produced in the field of plant varieties and seeds which apply on a UK, or GB, or England and Wales basis. These include;

- The Plant Breeders’ Rights (Amendment etc.) (EU Exit) Regulations 2018. These Regulations make amendments to primary and secondary legislation in the field of plant variety rights (The Plant Varieties Act 1997, the Plant Breeders’ Rights (Farm Saved Seed) (Specified Information) Regulations 1998, the Plant Breeders’ Rights Regulations 1998, the Plant Breeders’ Rights (Information Notices) Regulations 1998 and the Plant Breeders’ Rights (Naming and Fees) Regulations 2006).

- The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018. These Regulations make amendments to retained and directly applicable EU implementing legislation on the marketing of plant propagating material. They also addresses deficiencies in the Seeds (National Lists of Varieties) Regulations 2001, as a result of EU exit.

- The Marketing of Seed and Plant Propagating Material (Amendment etc.) (England and Wales) (EU Exit) Regulations 2018. These Regulations makes amendments to domestic legislation regulating the marketing of agricultural seed, forestry and vegetative propagating material. They amend the Marketing of Vegetable Plant Material Regulations 1995 and the Marketing of Ornamental Plant Propagating Material Regulations 1999 in relation to England and Wales and the Seeds Marketing Regulations, Marketing of Fruit Plant and Propagating Material and the Forest Reproductive Material (Great Britain) Regulations 2002 in relation to England.

4.12 Amendments to the Forest Reproductive Material (Great Britain) Regulations 2002 in relation to Wales will be made through a separate Wales only SI.

5. Consultation

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

6.1 An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

Annex 1
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)". This is the case because the changes being made are technical in nature and make no substantive changes to how the Seed Marketing Regulations 2011 and the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 operate.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because all changes being made are solely in order to address deficiencies arising from EU Exit".

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". This is because the provisions ensure that protections provided by The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 continue to be operable after the UK leaves the European Union.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

4.3 Little or no impact on equalities is expected.

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable / required.

7. Legislative sub-delegation

Not applicable / required.

8. Urgency

Not applicable / required.

SL(5)358 – The Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to the Bovine Semen (Wales) Regulations 2008 and the Trade in Animals and Related Products (Wales) Regulations 2011 to try to ensure that the statute book remains operable following the UK's exit from the EU.

The Regulations are made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the Withdrawal Act 2018.

Procedure

Negative

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:-

The English text of regulation 3(11)(c) is divided into two sub-paragraphs; the Welsh text has three. This is because the context of the amendments to the Welsh text requires them to be expressed slightly differently, so that sub-paragraph (ii) in the English text corresponds to sub-paragraphs (ii) and (iii) in the Welsh text. The equivalence would have been clearer if the two changes had been connected by an 'and' within sub-paragraph (ii) of the Welsh text rather than split into two sub-paragraphs. **(Standing Order 21.2 (vi)- that its drafting appears to be defective or it fails to fulfil statutory requirements).**

The numbering of the Welsh text of regulation 3(21)(e) is defective and therefore does not correspond to the English numbering. Sub-paragraph (ii) introduces a new sub-paragraph (1A) into the principal Regulations; the text of the insertion should follow immediately rather than appearing as a sub-paragraph (iii). The same problem also arises with sub-paragraphs (iv) and (v). There are therefore two more sub-paragraphs in the Welsh text than in the English text. **(Standing Order 21.2 (vi)- that its drafting appears to be defective or it fails to fulfil statutory requirements).**

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

Government Response

The Committee has identified two technical scrutiny points, both of which relate to the Welsh text of the instrument, which are addressed below.

Point 1 – Regulation 3(11)(c)

Regulation 3(11)(c) in both the English and Welsh texts of the instrument have equivalent legal effect. The lack of equivalence highlighted by the report is therefore only structural, rather than substantive, and a person seeking to rely on the Welsh text will be able to do so in the same way as a person seeking to rely on the English.

The report, in the second sentence related to this point, appears to acknowledge that the context of the amendments to the Welsh text legitimately gives rise to at least some degree of variation between the English and Welsh texts, and therefore that any difference in structure between the two does not in and of itself constitute defective drafting.

While the report points to an approach that is considered by the National Assembly's legal advisers to be more appropriate, there are in relation to any given provision often (if not always), a range of options available to drafters and translators alike. As such, while the Welsh Government accept that the approach suggested certainly works, it is also of the view that the differences between the approach suggested and that actually employed are not sufficient to render the instrument 'defective'

Point 2 – Regulation 3(21)(e)

The issue identified by the Committee in relation to regulation 3(21)(e) is relevant only in the context of the published version of the Welsh text. It does not appear in either the version made by the Minister for Environment, Energy and Rural Affairs, or the version that was laid before the National Assembly. The version of the instrument made and laid is accurate and therefore not defective. Given that fact, it is not possible to say with certainty how the issue in question has arisen. However, the means of resolving the issue are straightforward. Indeed, the National Archives has agreed that the version of the instrument published at present can simply be withdrawn and that made and laid published in its place.

Legal Advisers

Constitutional and Legislative Affairs Committee

8th March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 367 (W. 89)

EXITING THE EUROPEAN UNION, WALES

ANIMALS, WALES

ANIMAL HEALTH

The Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which applies in relation to Wales, relevant to the trade in animals and related products.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2019 No. 367 (W. 89)

EXITING THE EUROPEAN UNION, WALES

ANIMALS, WALES

ANIMAL HEALTH

The Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019

Sift requirements satisfied *11 February 2019*

Made *25 February 2019*

Laid before the National Assembly for Wales *27 February 2019*

Coming into force in accordance with regulation 1(2)

The Welsh Ministers, in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(**1**), make the following Regulations.

The requirements of paragraph 4(2) of Schedule 7 to that Act (relating to the appropriate National Assembly for Wales scrutiny procedure for these Regulations) have been satisfied.

Title, commencement and application

1.—(1) The title of these Regulations is the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

(**1**) 2018 c. 16.

(3) These Regulations apply in relation to Wales.

The Bovine Semen (Wales) Regulations 2008

2.—(1) The Bovine Semen (Wales) Regulations 2008(**1**) are amended as follows.

(2) In these Regulations—

(a) for "an EC", in each place it occurs, substitute "a licensed";

(b) for "EC", in each place it occurs, substitute "licensed".

(3) In regulation 2(1)—

(a) at the appropriate place insert—

""licensed" (*"trwyddedig"*) means licensed by the Welsh Ministers";

(b) in the definition of "unlicensed processing premises" "(*mangre brosesu sydd heb ei thrwyddedu*)", in paragraph (a)(ii) for "intra-Community trade" substitute "trade with a member State".

(4) In regulation 3—

(a) in paragraph (2), in the words after sub-paragraph (c), for "intra-Community trade" substitute "trade with a member State"; and

(b) omit paragraph (4).

(5) In regulation 4—

(a) in paragraph (b), in sub-paragraph (i) and (ii), for "intra-Community trade" substitute "trade with a member State";

(b) in paragraph (c), in sub-paragraph (i) and (ii), for "intra-Community trade" substitute "trade with a member State".

(6) In regulation 29(c), for "in another member State or in a third country" substitute "outside of the United Kingdom".

(7) In regulation 30—

(a) for the heading substitute "Trade in semen to a member State";

(b) in paragraph (1)—

(i) in the words before sub-paragraph (a), for "for intra-Community trade" substitute "to a member State";

(ii) in sub-paragraph (b), for "another member State or imported from a third country in accordance with the Directive" substitute "outside the United Kingdom";

(**1**) S.I. 2008/1040 (W. 110) as amended by S.I. 2013/398 (W. 48); there are other amendments which are not relevant to these Regulations.

(c) in paragraph (2), for the words "for intra-Community trade" to the end, substitute "to a member State must ensure that it is accompanied by the animal health certificate as published by the Welsh Ministers from time to time."

(8) In regulation 38(1), for "another" substitute "a".

(9) In Schedule 3—

(a) in Part 2—

(i) in paragraph 2—

(aa) in sub-paragraph (1), for "supplied for intra-Community trade" substitute "placed on the market";

(bb) in sub-paragraph (2), for "the subject of intra-Community trade" substitute "placed on the market";

(ii) in paragraph 3, for "intra-Community trade" substitute "trade with a member State";

(b) in Part 3, in paragraphs 1(b)(i) and (c), for "intra-Community" substitute "other".

(10) In Schedule 5, in Part 3, in paragraph 1—

(a) in sub-paragraph (a)(ii), for "another", in the second place it occurs, substitute "in a";

(b) in sub-paragraph (b), for the words from "marking" to the end substitute "distinct marking that is different to marking used at licensed collection and storage centres".

(11) In Schedule 8, in Part 1, in sub-paragraphs (a)(ii) and (b)(ii), for "another" substitute "a".

The Trade in Animals and Related Products (Wales) Regulations 2011

3.—(1) The Trade in Animals and Related Products (Wales) Regulations 2011(**1**) are amended as follows.

(2) In regulation 2(1), at the appropriate place insert—

""EU Traces system" (*"system Traces yr UE"*) means the Traces system established under Commission Decision 2004/292/EC(**2**) (on the introduction of the Traces system and amending Decision 92/486/EEC)";

""third country" (*"trydedd wlad"*) means any country other than the British Islands or a member State".

(**1**) S.I. 2011/2379 (W. 252), to which there are amendments not relevant to these Regulations.
(**2**) OJ No. L 94, 31.3.2004, p. 63.

(3) In regulation 4, for "between member States" substitute "with member States in accordance with such agreements".

(4) In Part 2, in the heading, for "Movement between member" substitute "Import from member".

(5) In regulation 5—

(a) for the heading, substitute "Import of animals and genetic material from member States";

(b) in paragraph (1), for the words "consigned" to the end, substitute "brought into Wales from a member State unless it is accompanied by a relevant completed and signed health certificate for that animal or genetic material."

(6) Omit regulation 6.

(7) In regulation 7—

(a) in the heading, for "between member States", substitute "into Wales".

(b) omit paragraph (1);

(c) in paragraph (2)—

(i) for "another" substitute "a"; and

(ii) after the words "Welsh Ministers" insert "via the system for the notification of imports that in the United Kingdom replaces the EU Traces system".

(8) In regulation 11—

(a) in paragraph (1), for "European Commission" substitute "Welsh Ministers";

(b) in paragraph (4)—

(i) omit the words from "set out" to "third countries)"; and

(ii) omit the words from "and must inform" to "reason".

(9) In regulation 12(4), after the word "approval" insert "by the Welsh Ministers".

(10) In regulation 14—

(a) in paragraph (1), after "post" insert "via the system for the notification of imports that in the United Kingdom replaces the EU Traces system";

(b) in paragraph (2), after "post" insert "via the system for the notification of imports that in the United Kingdom replaces the EU Traces system";

(c) in paragraph (4), for "another" substitute "a".

(11) In regulation 15—

(a) after paragraph (1), insert—

"(1A) For the purpose of paragraph (1)(a), Article 4 of Council Directive 97/78/EC is to be read as if in paragraph 4(a)(i) and (b)(i) the

references to "Community legislation" were substituted for "retained EU law"."

(b) after paragraph (1A), insert—

"(1B) For the purpose of paragraph (1)(b), Article 4 of Council Directive 91/496/EEC is to be read as if—

(a) in paragraph 1—

(i) the reference to "Member States" were a reference to "The Welsh Ministers";

(ii) in the second indent, the words from "at Community level" to the end of that indent were omitted;

(iii) in the third indent, "Community rules" were substituted for "retained EU law";

(iv) in the last indent, the words from "through" to the end of that indent were omitted;

(b) in paragraph 2—

(i) in sub-paragraph (b), "Community rules" were substituted for "retained EU law";

(ii) in sub-paragraph (d), the words "For the purposes of" to "his direction" were omitted;

(c) paragraph 5 were omitted."; and

(c) in paragraph (4)—

(i) in sub-paragraph (a), for the words from "the lists" to the end substitute "a list of approved third countries, or where imports from that territory are otherwise prohibited";

(ii) in sub-paragraphs (b), (c) and (e), for "legislation of the European Union" substitute "retained EU law".

(12) In regulation 18—

(a) in paragraph (2), for "European Union" substitute "United Kingdom"; and

(b) omit paragraph (4).

(13) In regulation 20(1)(b), for "outside the European Union" substitute "to a third country".

(14) For regulation 22(1) substitute—

"(1) If veterinary checks reveal that third country products are implicated in serious or repeated infringements of any import requirement, or where those checks reveal that maximum residue levels have been exceeded, the Welsh Ministers may apply this regulation to subsequent similar products brought into Wales from a particular third country, part of a

third country or a particular establishment until satisfied that further infringements are no longer recurring."

(15) In regulation 23—

(a) in paragraph (1)(c), omit ", outside the European Union"; and

(b) in paragraph (3)(b), omit "outside the European Union".

(16) In regulation 27—

(a) in paragraph (1), in the words before sub-paragraph (a), for "European Union" substitute "United Kingdom";

(b) in paragraph (3)(a), omit "in the member State".

(17) In regulation 33(2), omit ", including any representative of the European Commission".

(18) In regulation 35—

(a) in the heading and paragraph (1), for "another" substitute "a";

(b) for paragraph (2)(c), substitute—

"(c) returning the animals or genetic material to the member State of despatch, with the authorisation of the competent authority, and following prior notification to any member State of transit."

(19) In regulation 39, in the table—

(a) in column 1, omit "regulation 6(5)" and the corresponding entry in in column 2;

(b) in column 1, omit "regulation 6(6)" and the corresponding entry in column 2.

(20) Schedule 2 is amended in accordance with paragraphs (21) and (22).

(21) In Part 1—

(a) in the heading, for "trade between" substitute "imports from";

(b) in paragraph 2(1), for "between" substitute "from";

(c) omit paragraph 3;

(d) in paragraph 4, in the words before sub-paragraph (a), omit "relating to trade between member States";

(e) in paragraph 5—

(i) for sub-paragraph (1), substitute—

"(1) No person may import an ape (simia and prosimian) unless it comes from a centre approved by the competent authority of a member State and is destined for a centre approved by the Welsh Ministers in accordance

with Council Directive 92/65/EEC ("the Balai Directive").";

(ii) after sub-paragraph (1), insert—

"(1A) Sub-paragraph (1) is subject to sub-paragraph (1B).";

(iii) after sub-paragraph (1A), insert—

"(1B) The Welsh Ministers may in writing authorise an approved body to acquire an ape from an individual."

(iv) in sub-paragraph (2), at the end insert "(with references in Article 13 to a member State of destination to be read as a reference to Wales, a reference to a competent authority of a member State to be read as the Welsh Ministers, and paragraphs 2(d) and (e) being omitted)."

(v) in sub-paragraph (3), at the end insert "(with references in point 6 of Annex C to the competent authority to be read as a reference to the Welsh Ministers, references to Community legislation as references to retained EU law, and paragraph (d) of point 6 being omitted).";

(vi) in sub-paragraph (4), for the words from "between member" to the end, substitute "in ova and embryos of the ovine, caprine and equine species and semen of the ovine, caprine and equine species and of swine.";

(vii) omit sub-paragraph (5);

(f) for paragraph 6(3) substitute—

"(3) No person may contravene Article 10(1) of that Commission Regulation (notification of movement).";

(g) for paragraph 7, substitute—

"Animal by-products

7. No person may import into Wales an animal by-product to which Article 48 of Regulation (EC) No 1069/2009 applies unless it is imported in accordance with that Article.";

(22) In Part 2, in paragraph 9, before "Commission" insert "the import of certain birds and quarantine conditions for the purpose of".

(23) In Schedule 3, in paragraph 5 —

(a) in the heading, for "member State" substitute "part of the United Kingdom";

(b) after "products" insert "from a third country";

(c) omit "another member State or".

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
25 February 2019

Explanatory Memorandum to The Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
27 February 2019

PART 1

1. Description

1.1. This instrument makes amendments to the Bovine Semen (Wales) Regulations 2008 ("the 2008 Regulations" and the Trade in Animals and Related Products (Wales) Regulations 2011 ("the 2011 Regulations"). These amendments are to ensure that the statute book remains operable following the UK's exit from the EU and will address deficiencies in domestic legislation arising from EU Exit.

1.2. This instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ("the 2018 Act") defines as 29 March 2019 at 11.00pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the Withdrawal Act 2018.

2.2 As set out in the Ministerial statement in Annex 2 to this Explanatory Memorandum it is proposed that the instrument be subject to negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

2.3 The CLA Committee considered a draft of these regulations on 11 February 2019 and agreed that the negative procedure is appropriate for these regulations. A copy of the published CLA report can be accessed via the following link: http://www.assembly.wales/laid%20documents/cr-ld12150/cr-ld12150-e.pdf

3. Legislative background

3.1 This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The domestic legislation amended by this instrument is derived from four pieces of EU legislation (Council Directive 89/662/EEC,, Council Directive 90/425/EEC, Council Directive 91/496/EEC and Council Directive 97/78/EC) which ensure that veterinary controls on EU trade

and imports of live animals and animal products are safe with regard to animal and public health and that they meet the specific import conditions laid down in the relevant EU legislation.

4.2 That domestic legislation is related to imports of live animals, products of animal origin, germplasm, animal by-products, and the non-commercial movement of pet animals and equines. Its primary aim is to ensure sufficient pre-notification of arrival, proper certification, checks of certain consignments and isolation and vaccination facilities where necessary to ensure strong biosecurity protection of animals and related products brought into Great Britain.

4.3 A summary of the domestic Regulations subject to amendment is set out in the following paragraphs.

4.4 The 2008 Regulations implement Council Directive 2003/43/EC laying down the animal requirements applicable to intra-Community trade in, and imports of, semen of domestic animals of the bovine species. They control the collection, processing and storage of bovine semen, and establish two regimes: one by which semen may be collected and processed for trade with other EU Member States, and one by which semen may be collected for use in other parts of the UK. Failure to comply with the Regulations is an offence under the Animal Health and Welfare Act 1984, which also provides for inspectors appointed by the Welsh Ministers to enforce the Regulations.

4.5 The 2011 Regulations establish a system for trade with other EU Member States in live animals and genetic material and for the importation of live animals, genetic material, products of animal origin and animal by-products from outside the European Union. They also list the EU legislation required to be complied with before animals or goods can be released from control at the port of importation. The Welsh Ministers are empowered to prohibit importation into Wales of any animal or product in the event of a disease outbreak outside the UK. They are enforced by the Welsh Minsters, port health authorities, local authorities and the United Kingdom Border Force. The Regulations establish various offences, punishable on summary conviction to a fine up to the statutory maximum or on conviction on indictment to an unlimited fine.

Why is it being changed?

4.6 After EU Exit, without amendment, certain provisions within the 2008 and 2011 Regulations will be inoperable and, as a result, existing law will either be unclear or will not function effectively. The Welsh Ministers make this instrument in exercise of the powers conferred by the Withdrawal Act to make the necessary technical changes to ensure that it will continue to operate effectively after the UK has left the EU.

4.7 The changes include:

- references to “EC” collection, quarantine and storage centres so that they are rendered references to collection, quarantine and storage centres licensed by the Welsh Ministers;
- references to “intra—Community trade” becoming references to “trade with a member State”;
- occurrences of trade “between Member States” becoming references to trade “into Wales”; and
- occurrences of “Movement between Member States” becoming references to “Import from Member States”;
- references to European legislation concerning current EU health certificates becoming references to replacement documentation;
- references to the “EU Traces system” becoming references to “the system for the notification of imports that in the United Kingdom replaces the EU Traces system”;
- the EU Commission’s powers to approve a Border Inspection Post being assumed by the Welsh Ministers;
- lists of approved third countries that certain animals or products of animal origin can be imported drawn up by the EU becoming references to lists drawn up by the Welsh Ministers.

What will it now do?

4.8 The instrument will make technical amendments to allow the 2008 and 2011 Regulations to be fully operable after exit day and thereby enable the trade in bovine semen, animals and animal related products to operate effectively, and halt any animals or products that are deemed to be a threat to animal and/or public health. There are no policy changes introduced in this instrument.

5. Consultation

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain operable by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

6.1 An RIA has not been conducted as these are minor technical changes necessary as a result of the UK’s withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant,

impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because the changes being made are technical in nature and make no substantive changes to how the two instruments included in the Regulations operate.”

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is because the provisions ensure that protections provided by Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019 continue to be operable after the UK leaves the European Union.”

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4.3 Little or no impact on equalities is expected.

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

Agenda Item 4.10

SL(5)359 – The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to subordinate legislation, which apply in relation to Wales and the Welsh Zone, in the fields of fisheries and marine management. These Regulations make amendments to the following domestic instruments:

a.The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006,

b. The Marine Licencing (Exempted Activities) (Wales) Order 2011; and

c. The European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016.

The amendments are required to ensure that the statute book remains operable following the UK's exit from the EU by addressing deficiencies in domestic legislation arising from the UK's exit from the EU.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 370 (W. 91)

EXITING THE EUROPEAN UNION

SEA FISHERIES, WALES

MARINE MANAGEMENT, WALES

The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which apply in relation to Wales and the Welsh zone, in the fields of fisheries and marine management.

An amendment made by these Regulations has the same application as the enactment amended.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2019 No. 370 (W. 91)

EXITING THE EUROPEAN UNION

SEA FISHERIES, WALES

MARINE MANAGEMENT, WALES

The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019

Sift requirements satisfied *18 February 2019*

Made *25 February 2019*

Laid before the National Assembly for Wales *27 February 2019*

Coming into force in accordance with regulation 1(2)

The Welsh Ministers, in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(**1**), make the following Regulations.

The requirements of paragraph 4(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Assembly procedure for these Regulations) have been satisfied.

Title, commencement and application

1.—(1) The title of these Regulations is the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019.

(**1**) 2018 c.16.

(2) These Regulations come into force on exit day.

(3) An amendment made by these Regulations has the same application as the enactment amended.

The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006

2. In the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006(**1**), in regulation 2(1), in the definition of "licenced fishing vessel", omit "by another Member State or".

The Marine Licensing (Exempted Activities) (Wales) Order 2011

3.—(1) The Marine Licensing (Exempted Activities) (Wales) Order 2011(**2**) is amended as follows.

(2) After article 3, insert—

"3A Modification of the Waste Framework Directive

(1) For the purposes of this Order, the Waste Framework Directive is to be read in accordance with this article.

(2) A reference to one or more Member States in a provision imposing an obligation or conferring a discretion on a Member State or Member States is to be read as a reference to the appropriate authority or local authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of Wales.

(3) Article 2 is to be read as if—

(a) in paragraph 2—

(i) in the words immediately before point (a), for "other Community legislation" there were substituted "retained EU law";

(ii) in points (b) and (c), for "Regulation (EC) No 1774/2002" there were substituted "Regulation (EC) No 1069/2009";

(iii) in point (d), for the words from "Directive 2006/21/EC(**1**)" to the

(**1**) S.I. 2006/1495 (W. 145) as amended by S.I. 2018/1095 (W. 228).

(**2**) S.I. 2011/559 (W. 81) as amended by S.I. 2013/414 (W. 50), S.I. 2013/755 (W. 90), S.I. 2016/690 (W. 188), S.I. 2017/1012, S.I. 2017/1013, S.I. 2018/724 (W. 141), and by the Wales Act 2017 (c. 4).

end there were substituted "the Mining Waste Directive";

(b) in paragraph 3, the words from "Without prejudice" to "Community legislation" were omitted;

(c) paragraph 4 were omitted.

(4) Article 5 is to be read as if paragraph 2 were omitted.

(5) Article 6 is to be read as if—

(a) paragraphs 1 to 3 were omitted;

(b) in paragraph 4—

(i) in the first sentence, for the words from "Where criteria" to "paragraphs 1 and 2" there were substituted "Except where waste ceases to be waste in accordance with Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013";

(ii) the second sentence were omitted.

(6) Article 7 is to be read as if—

(a) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) in the third sentence, for "shall be binding" there were substituted "shall, subject to paragraph 1A, be binding";

(b) after paragraph 1, there were inserted—

"**1A.** Paragraph 1 is subject to—

(a) a determination by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005(**2**) that a specific batch of waste is to be treated as hazardous waste;

(b) a decision made by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005(**3**) that a specific batch of waste is to be treated as non-hazardous waste;

(**1**) OJ No L 102, 11.4.2006, p 15, as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ No L 188, 18.7.2009, p 14).

(**2**) S.I. 2005/1806 (W. 183).

(**3**) S.I. 2005/894.

(c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;

(d) regulations (if any) made by the Welsh Ministers under section 62A(2) of the Environmental Protection Act 1990(**1**) (lists of waste displaying hazardous properties).";

(c) paragraphs 2, 3 and 5 were omitted;

(d) after paragraph 6, there were inserted—

"**6A.** In this Article, the "list of waste" means the list established by Commission Decision 2000/532/EC.";

(e) paragraph 7 were omitted.

(7) Article 23 is to be read as if—

(a) a reference to the "competent authority" were a reference to the "appropriate authority";

(b) in paragraph 5, "or Community" were omitted.

(8) Annex 3 is to be read as if, in entry HP 9, in the second sentence, "in the Member States" were omitted.

(9) In reading the Waste Framework Directive in accordance with this article—

(a) "appropriate authority" ("*awdurdod priodol*") means the Welsh Ministers or the Natural Resources Body for Wales;

(b) "local authority" ("*awdurdod lleol*") means a county council or county borough council in Wales.

3B Meaning of "Mining Waste Directive"

(1) In reading Article 2 of the Waste Framework Directive in accordance with article 3A, the reference to "the Mining Waste Directive" (as inserted by article 3A(3)(a)(iii)) means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs (2) to (4).

(2) Article 2 is to be read as if—

(**1**) 1990 c. 43.

(a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC(**1**) were a reference to that Article read in accordance with paragraph (4) of this article;

(b) paragraphs 3 and 4 were omitted.

(3) Article 3(1) is to be read as if, for "Article 1(a) of Directive 75/442/EEC" there were substituted "Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive".

(4) In reading the Mining Waste Directive in accordance with this article, the reference to the "Waste Framework Directive" (as inserted by paragraph (3)) has the meaning given by article 3 of this Order read in accordance with article 3A.

(5) For the purposes of paragraph (2), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(a) the references to "Member States" were references to the "Welsh Ministers or the Natural Resources Body for Wales";

(b) at the end, there were inserted—

"and "environmental objective", in relation to a river basin district (within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017)(**2**), has the same meaning as in those Regulations.""

(3) In article 33(2)—

(a) in sub-paragraph (a), for "(other than Gibraltar) which is not a Member State; and" substitute "other than the United Kingdom.";

(b) omit sub-paragraph (b).

The European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016

4.—(1) The European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016(**3**) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(**1**) OJ No L 327, 22.12.2000, p 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p 32).

(**2**) S.I. 2017/407, to which there are amendments not relevant to these Regulations.

(**3**) S.I. 2016/665 (W. 182).

(i) in the definition of "approved operation", at the end, insert "(see paragraph 3)";

(ii) in the definition of "authorised person", omit ", and includes any duly appointed official of the Commission who accompanies such an authorised person";

(iii) omit the definition of "the Commission";

(iv) omit the definition of "EU assistance";

(v) in the definition of "operation", in paragraph (b), for "EU assistance" substitute "assistance pursuant to Regulation 508/2014".

(b) after paragraph (2), insert—

"(3) For the avoidance of doubt, an "approved operation" includes an operation which the Welsh Ministers have approved in writing for the receipt of financial assistance under regulation 4 before exit day."

(3) In regulation 8(2)(d), for "EU assistance" substitute "assistance pursuant to Regulation 508/2014".

(4) In regulation 11—

(a) omit paragraph (1)(j)(i);

(b) omit paragraph (3).

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers
25 February 2019

Explanatory Memorandum to the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019.

This Explanatory Memorandum has been prepared by the Department for Energy, Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs.

27 February 2019

1. Description

1.1. The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019 (the "2019 Regulations") make amendments to the following domestic instruments:

a. The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006,

b. The Marine Licencing (Exempted Activities) (Wales) Order 2011; and

c. The European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016.

1.2. The amendments are required to ensure that the statute book remains operable following the UK's exit from the EU by addressing deficiencies in domestic legislation arising from EU Exit.

1.3. The instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ("the 2018 Act") defines as 29 March 2019 at 11.00 pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 The 2019 Regulations are made in exercise of the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act.

2.2 As set out in the Ministerial Statement in Part 2 of the Annex to this Explanatory Memorandum, it is proposed that the instrument be subject to the negative procedure.

2.3 The CLA Committee considered a draft of these regulations on 18 February 2019, and agreed that the negative procedure is appropriate for these regulations. A copy of the published CLA report can be accessed via the following link: http://www.assembly.wales/laid%20documents/cr-ld12192/cr-ld12192-e.pdf

3. Legislative Background

3.1 The 2019 Regulations are made in order to address deficiencies in domestic legislation and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

4. Purpose and Intended effect of the Legislation

4.1 The 2019 Regulations make amendments to subordinate legislation, which apply in relation to Wales and the Welsh zone, in the fields of fisheries and marine management.

What did the relevant legislation do before exit day?

4.2 The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006 make provision for the administration and enforcement of Article 22 of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, and Article 9 of Council Regulation (EEC) No 2847/93 which impose requirements relating to the first marketing and purchasing of fish (first sale fish) (now repealed and replaced by Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy). The Regulations also make provision for the registration by the Welsh Ministers of sellers of first sale fish, designation of fish auction sites and registration of buyers of first sale fish. The Regulations require registered fish sellers to maintain records of their sales of first sale fish and require buyers of first sale fish to maintain records of their purchases of first sale fish.

4.3 The Marine Licensing (Exempted Activities) (Wales) Order 2011 specifies activities which do not need a marine licence, or do not need a marine licence if conditions specified within the Order are satisfied. It applies in relation to any licensable marine activity carried on in Wales and the Welsh inshore region, in relation to which the Welsh Ministers are the appropriate licensing authority under section 113 of the Marine and Coastal Access Act 2009 (Article 2). The Order also contains provisions, relating to waste (which implement in part Directive 2008/98/EC of the European Parliament and of the Council on waste).

4.4 The European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016 apply to the operational programme established under Regulation (EU) No 508/2014 on the European Maritime and Fisheries Fund and Regulation (EU) No 1303/2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund. These Regulations provide that the Welsh Ministers may make payments for approved operations (defined in Title V of Regulation (EU) 508/2014). These Regulations enable operations to be approved by the Welsh Ministers in Wales, thus allowing for the payment of funds, and also provide powers of entry and inspection that may be exercised by the Welsh Ministers, and stipulate record keeping requirements for those who benefit from the financial assistance available.

What are the changes being made

4.5 The changes made by the 2019 Regulations are necessary to ensure that the current legislation continues to operate effectively after we leave the EU.

4.6 **The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006**

The 2019 Regulations amend regulation 2(1) of these Regulations to redefine the meaning of “licenced fishing vessel” so that it no longer refers to “another Member State”. This will result in only vessels licenced under section 4 of the

Sea Fish (Conservation) Act 1967 being recognised as 'licenced fishing vessels' for the purposes of the 2006 Regulations. .

4.7 **The Marine Licencing (Exempted Activities) (Wales) Order 2011**

The 2011 Order includes a cross reference to the Waste Framework Directive 2008/98/EC (WFD). As European Directives are not being incorporated into domestic law under the European Union (Withdrawal) Act 2018, a non-textual modification to the WFD has been included in the amendments to the 2011 Order to enable the WFD to be read correctly for the purposes of domestic law.

This modification provides for changes such as identifying the "Competent Authority" as the Welsh Ministers, Natural Resources Wales or a Local Authority, which immediately before exit day was responsible for the UK's compliance with an obligation, or exercised a discretion in relation to that obligation in respect of Wales. Such changes will allow the 2011 Order to operate effectively on exit from the European Union. The 2019 Regulations also amend the definition of a 'third country vessel,' by removing the reference to Gibraltar. Any vessel that is not registered in the UK will therefore be considered a third country vessel for the purposes of Article 4 of the 2011 Order.

4.8 **The European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016**

The 2016 Regulations have been amended to recognise that upon exiting the EU, the UK will no longer be a beneficiary of the European and Maritime Fisheries Fund (EMFF) scheme. Future funding will come from HM Treasury. In line with this change, and the amendments that are to be made to the Retained EU Regulation 508/2014, the 2016 Regulations will in future apply to financial assistance provided to the fishing and aquaculture sector in the UK.

Amendments such as that to Regulation 2(1) and the definition of "operation" have therefore been made. This amendment removes reference to 'EU assistance' and instead refers to "assistance pursuant to Regulation 508/2014". Consequently the same amendment is made to Regulation 8(2)(d). This amendment is required as Title V of Regulation 508/2014 will form part of Retained EU law, and will provide guidance on the nature of operations that will qualify for assistance under the new funding structure post EU exit.

In Regulation 2(1) the definition of "authorised person" is amended to remove the wording "and includes any duly appointed official of the Commission who accompanies such an authorised person".

Further, Regulation 2(3) is inserted to provide clarification that an 'approved operation' for the purposes of the 2016 Regulations includes an operation approved by the Welsh Ministers in line with Regulation 4 of the 2016 Regulations before exit day. This provision makes express reference to 'exit day' and this will be interpreted in line with the Interpretation Act 1978

definition, as amended by paragraph 22 of Schedule 8 to, and sections 20(1)-(5) of the 2018 Act.

5. Consultation

5.1 The amendments required are of a technical nature and do not alter the intended purpose of the specified Regulations. Therefore, no public consultation was undertaken.

6. Regulatory Impact Assessment

6.1 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations. This legislation has no impact on the statutory duties (sections 77-79 Government of Wales Act 2006) or statutory partners (sections 72-75 Government of Wales Act 2006).

7. Monitoring & review

7.1 As this instrument is made under the Withdrawal Act, no extra review arrangement is required.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	**Where the requirement sits**	**To whom it applies**	**What it requires**
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		Ministers have committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because the changes being made are technical in nature and make no substantive changes to how the three Instruments included in this Regulation operate”.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit”.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is because the provisions ensure that protections provided by all the statutory instruments being amended continue to be operable after the UK leaves the European Union.”

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs has made the following statement:

> “The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019 instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

4.2 The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> “In relation to the instrument, I, Lesley Griffiths have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

SL(5)360 – The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 ("these Regulations") are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which apply in relation to Wales, in the field of control and prevention of exotic diseases in animals.

Procedure

Negative.

Technical Scrutiny

Four points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. **Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements**

Regulation 3(2) of these Regulations refers to references to "Member States" and "Article 2(u) of Directive 2001/89/EC" in point 3.2 of Annex X of Council Directive 2003/85/EC ("the 2003 Directive"). However, neither of these references appear in point 3.2 of Annex X to the 2003 Directive. Both do, however, appear in point 3.1 of Annex X to the 2003 Directive, which suggests that this was the appropriate reference.

2. **Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements**

Regulation 4(2) of these Regulations substitutes wording in regulation 9(5) of the Avian Influenza (Preventive Measures) (Wales) Regulations 2006. The effect of this new wording is that the National Assembly for Wales must ensure that vaccination is carried out in accordance with the preventive vaccination plan approved in accordance with Article 56(2) of Council Directive 2005/94/EC ("the 2005 Directive"), as read with Article 5 of Commission Decision 2007/598. However, Article 56(2) of the 2005 Directive provides that the preventive vaccination plan must be submitted to the EU Commission for approval, and these Regulations do not provide that the reference to the EU Commission in Article 56(2) of the 2005 Directive be read differently. Therefore, this appears to be defective.

3. **Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements**

Regulation 7(3) of these Regulations omits the word *"other"* from article 9(1) of the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006 ("the 2006 Order"). However, the word *"other"* appears twice in article 9(1) of the 2006 Order. It is not clear whether regulation 7(3) of these Regulations refers to both instances where the word "other" appears, especially given that one of the references, *"other captive bird"*, is a defined phrase in article 2 of the 2006 Order.

4. **Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements**

Regulation 7(5) of these Regulations revokes paragraphs (1)(b) and (2) of article 12 of the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006. However, these provisions have already been revoked by the Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

The Committee has raised four reporting points under Standing Order 21.2
(1) Cross reference
The first reporting point relates to incorrect cross references. Welsh Government acknowledges the point. An amendment will be made at the next available opportunity.
(2) Amendment of EU Instrument
Amendments are made by Regulation 13 of the Exotic Disease (Amendment etc.) (EU Exit) Regulations 2018 No.1410 to Commission Decision 2007/598 which has effect so that future preventive vaccination plans will no longer be approved by the Commission.
Paragraph (1) of article 5 of Commission Decision 2007/598 provides for the approval of preventive vaccination plans submitted in accordance with Article 56(2) of Directive 2005/94/EC and listed in Part I of Annex III to that Decision. Paragraph (2) of article 5 provides that the Commission is to publish the approved preventive vaccination plans referred to in paragraph 1.
Regulation 13 of the Exotic Disease (Amendment etc.) (EU Exit) Regulations 2018 substitutes article 5 of Commission Decision 2007/598/EC with effect that preventive vaccination plans for the United Kingdom already submitted in accordance with Article 56(2) of Directive 2005/94/EC and approved by the EU Commission on 27 June 2007 under Article 57(2) of that Directive continue in force.

The amendment also provides that the Secretary of State, with the consent of each other authority who in relation to any constituent part of the United Kingdom is the appropriate Minister, must publish preventive vaccination plans approved under Article 57 of Directive 2005/94/EC, on the basis that functions of Member States were to be read as if they refer to the functions of the appropriate Minister.
(3) Reference to term "other"
Regulation 7(3) of these Regulations omits the word "other" from article 9(1), 10 (1) and 11(1) of the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006 ("the 2006 Order"). Although the word "other" appears twice in article 9(1) of the 2006 Order, it is clear that regulation 7(3) of these Regulations refers to the instance where the word appears before "member state" given that the amendments are made to

address failures of retained EU law to operate effectively and the same amendments are made in relation to articles 10(1) and 11(1).

(4) Revocation of provision

Regulation 7(5) of these Regulations revokes paragraphs (1)(b) and (2) of article 12 of the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006. The Welsh Government acknowledges that these provisions have already been revoked by the Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018. An amendment will be made at the next available opportunity.

Legal Advisers
Constitutional and Legislative Affairs Committee
12 March 2019

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ANIMALS, WALES

The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which apply in relation to Wales, in the field of control and prevention of exotic diseases in animals.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ANIMALS, WALES

The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Sift requirements satisfied *28 January 2019*

Made *25 February 2019*

Laid before the National Assembly for Wales *27 February 2019*

Coming into force in accordance with regulation 1(2)

The Welsh Ministers, in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(**1**), make the following Regulations.

The requirements of paragraph 4(2) of Schedule 7 to that Act (relating to the appropriate National Assembly for Wales scrutiny procedure for these Regulations) have been satisfied.

Title, commencement and application

1.—(1) The title of these Regulations is the Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

(3) These Regulations apply in relation to Wales.

(**1**) 2018 c. 16

The Foot and Mouth Disease (Wales) Order 2006

2. In the Foot and Mouth Disease (Wales) Order 2006(**1**), in paragraph 7 of Schedule 7, for "another member State" substitute "a member State, Norway, Iceland or Liechtenstein".

The Foot-and-Mouth Disease (Control of Vaccination) (Wales) Regulations 2006

3.—(1) The Foot-and-Mouth Disease (Control of Vaccination) (Wales) Regulations 2006(**2**) are amended as follows.

(2) In regulation 9, after paragraph (3) insert—

"(4) For the purposes of paragraph (1)(c), point 3.2 of Annex X of Council Directive 2003/85/EC is to be read as if—

(a) the reference to "Member States" were a reference to "the Welsh Ministers";

(b) Article 2(u) of Directive 2001/89/EC as it applies to point 3.2 were modified so that—

(i) for the words "region, as defined in Article 2(2)(p) of Council Directive 64/432/EEC", there were substituted "county or county borough in Wales";

(ii) for "such a region" there were substituted "such a county or county borough"."

(3) In regulation 27—

(a) for "intra-Community trade" substitute "trade with a member State, Norway, Iceland or Liechtenstein";

(b) the heading to that regulation becomes "Trade in vaccinated animals".

(4) In regulation 35(2)(a), for "EU obligations" substitute "retained EU law".

The Avian Influenza (Preventive Measures) (Wales) Regulations 2006

4.—(1) The Avian Influenza (Preventive Measures) (Wales) Regulations 2006(**3**) are amended as follows.

(2) In regulation 9(5), for the words from "by the European Commission" to the end, substitute "in

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(**1**) S.I. 2006/179 (W. 30) to which there are amendments not relevant to these Regulations.

(**2**) S.I. 2006/180 (W. 31) as amended by S.I. 2011/1043 and to which there are other amendments not relevant to these Regulations.

(**3**) S.I. 2006/2803 (W. 242) as amended by S.I. 2011/1043 and to which there are other amendments not relevant to these Regulations.

accordance with Article 56(2) of Council Directive 2005/94/EC on Community measures for the control of avian influenza and repealing Directive 92/40/EEC as read with Article 5 of Commission Decision 2007/598 concerning measures to prevent the spread of highly pathogenic avian influenza to other captive birds kept in zoos and approved bodies, institutes or centres" (but the footnote to regulation 9(5) is not to be substituted).

(3) In regulation 11, in paragraphs (2)(a) and (3), for "another" substitute "a".

(4) In regulation 18(3)(c), for "EU obligations" substitute "retained EU law".

The Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006

5.—(1) The Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006(**1**) is amended as follows.

(2) In article 22(2), for "another" substitute "a".

(3) In article 32, for "intra-Community or international trade" substitute "export outside the United Kingdom".

(4) In article 50(1)(b)(ii), for "another", in both places where it occurs, substitute "a".

(5) In article 63(5), for "intra-Community or international trade" substitute "export outside the United Kingdom".

The Avian Influenza (Vaccination) (Wales) (No.2) Regulations 2006

6.—(1) The Avian Influenza (Vaccination) (Wales) (No.2) Regulations 2006(**2**) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(i) for the definition of "emergency vaccination plan" substitute—

""emergency vaccination plan" ("*cynllun brechu brys*") means an emergency vaccination plan published in accordance with Article 53 of the Directive as read with the modifications set out in paragraph (3)";

(ii) for the definition of "preventive vaccination plan" substitute—

""preventive vaccination plan" ("*cynllun brechu ataliol*") means a preventive vaccination plan published in accordance with Article 56 of the

(**1**) S.I. 2006/2927 (W. 262) to which there are amendments not relevant to these Regulations.

(**2**) S.I. 2006/2932 (W. 265) to which there are amendments not relevant to these Regulations.

Directive as read with the modifications set out in paragraph (4)";

(b) after paragraph (2) insert—

"(3) For the purposes of the definition of "emergency vaccination plan" in paragraph (1), Article 53 of the Directive is to be read as if it were modified as follows—

(a) in paragraph 1—

(i) for "A Member State" substitute "The Welsh Ministers";

(ii) for the words from "the Member State concerned" to the end substitute "Wales";

(b) in paragraph 2—

(i) for "a Member State intends" substitute "the Welsh Ministers intend";

(ii) for "it shall submit an emergency vaccination plan to the Commission for its approval" substitute "the Welsh Ministers must publish an emergency vaccination plan";

(iii) in sub-paragraph (g), for "the measures provided for in Sections 3, 4 and 5 of Chapter IV and Section 3 of Chapter V" substitute "any provision of—

(i) the Avian Influenza (Preventive Measures) (Wales) Regulations 2006 (S.I. 2006/2803);

(ii) the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No. 2) Order 2006 (S.I. 2006/2927);

(iii) the Avian Influenza (Vaccination) (Wales) (No. 2) Regulations 2006 (S.I. 2006/2932);

(c) omit paragraph 3.

(4) For the purposes of the definition of "preventive vaccination plan" in paragraph (1), Article 56 of the Directive is to be read as if it were modified as follows—

(a) in paragraph 1—

(i) for "Member States" substitute "The Welsh Ministers";

(ii) for "their territory" substitute "Wales";

(b) in paragraph 2—

(i) for "a Member State intends" substitute "the Welsh Ministers intend";

(ii) for "it shall submit a preventive vaccination plan to the Commission for its approval" substitute "the Welsh Ministers must publish a preventive vaccination plan";

(iii) in sub-paragraph (g), for "the measures provided for in Sections 3, 4 and 5 of Chapter IV and Section 3 of Chapter V" substitute "any provision of—

(i) the Avian Influenza (Preventive Measures) (Wales) Regulations 2006 (S.I. 2006/2803);

(ii) the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No. 2) Order 2006 (S.I. 2006/2927);

(iii) the Avian Influenza (Vaccination) (Wales) (No. 2) Regulations 2006 (S.I. 2006/2932);

(c) omit paragraph 3."

(3) In regulation 6(3), for "submitted to and approved by the European Commission in accordance with Articles 53 and 54 of the Directive" substitute "published".

(4) In regulation 7(2)(b), for "submitted to and approved by the European Commission in accordance with Articles 56 and 57 of the Directive" substitute "published".

(5) In regulation 10—

(a) the heading becomes "Emergency vaccination without a published plan";

(b) in paragraph (1), for "approved by the European Commission in accordance with Article 54 of the Directive" substitute "published";

(c) in paragraph (7), for "an emergency vaccination plan has been approved by the European Commission in accordance with Article 54 of the Directive" substitute "a plan equivalent to an emergency vaccination plan has been published by the Scottish Ministers, the Secretary of State or the Northern Ireland Executive, as the case may be".

(6) In regulation 19(3)(c), for "EU obligations" substitute "retained EU law".

The Avian Influenza (H5N1 in Poultry) (Wales) Order 2006

7.—(1) The Avian Influenza (H5N1 in Poultry) (Wales) Order 2006(**1**) is amended as follows.

(2) In article 2—

(a) In the definition of "approved body", for the words from "in accordance with" to the end substitute "—

(a) where the body is in Wales, by the Welsh Ministers,

(b) where the body is in England, by the Secretary of State,

(c) where the body is in Scotland, by the Scottish Ministers,

(d) where the body is in Northern Ireland, by the Northern Ireland Executive, or

(e) where the body is in a member State, in accordance with Article 2(1)(c) of Directive 92/65/EEC laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive 90/425/EEC;"

(b) after the definition of "temporary movement restriction zone" insert—

""third country" means any country that is neither the United Kingdom nor a member State;"

(3) In articles 9(1), 10(1) and 11(1), omit the word "other".

(4) In articles 9(3)(c) and 10(3)(c) and (e), for "another" substitute "a".

(5) In article 12, omit paragraphs (1)(b) and (2).

(6) In article 14—

(a) in paragraph (1)(d), for "another" substitute "a";

(b) after paragraph (3) insert—

"(3A) In paragraph (2)(p), the reference to "the competent authority" includes the Secretary of State, the Welsh Ministers, the Scottish Ministers or the Northern Ireland Assembly, as the case may be.".

(**1**) S.I. 2006/3309 (W. 299) as amended by S.I. 2011/600 (W. 88), S.I. 2011/2377 (W. 250), and S.I. 2014/517(W. 60).

The Bluetongue (Wales) Regulations 2008

8. In the Bluetongue (Wales) Regulations 2008(**1**), for regulation 19(4) substitute—

"(4) The Welsh Ministers may only grant a licence under paragraph (1) or declare a zone under paragraph (2) if the decision to use the vaccine is based on the result of a specific risk assessment carried out by the Welsh Ministers."

The Products of Animal Origin (Disease Control) (Wales) Regulations 2008

9.—(1) The Products of Animal Origin (Disease Control) (Wales) Regulations 2008(**2**) are amended as follows.

(2) In regulation 17, for paragraph (15) substitute—

"(15) An inspector who enters any premises, establishment or vehicle may be accompanied by such other persons as the inspector considers necessary."

(3) In Schedule 3, in paragraph 1(b), omit paragraph (iii).

The Poultry Compartments (Wales) Order 2010

10. In the Poultry Compartments (Wales) Order 2010(**3**), in article 5(1)(f) omit "a representative of the European Commission or".

The African Horse Sickness (Wales) Regulations 2013

11.—(1) The African Horse Sickness (Wales) Regulations 2013(**4**) are amended as follows.

(2) In regulation 20(1)(a), for "officially confirmed for the purposes of Council Directive 92/35/EEC laying down control rules and measures to combat African horse sickness" substitute "confirmed".

(3) For regulation 29(8)(b) substitute—

"(b) be accompanied by such other persons as the inspector considers necessary."

Lesley Griffiths
Minister for Environment, Energy, and Rural Affairs, one of the Welsh Ministers
25 February 2019

(**1**) S.I. 2008/1090 (W. 116) as amended by S.I. 2012/2403 (W. 257) and to which there are other amendments not relevant to these Regulations.
(**2**) S.I. 2008/1275 (W. 132) as amended by S.I. 2018/806 (W. 162) and to which there are other amendments not relevant to these Regulations.
(**3**) S.I. 2010/1780 (W. 169).
(**4**) S.I. 2013/1662 (W. 158).

Explanatory Memorandum to The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

This Explanatory Memorandum has been prepared by Department for Environment, Energy and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
27 February 2019

PART 1
1. Description

1.1. This instrument makes amendments to subordinate legislation, which apply in relation to Wales, in the field of control and prevention of exotic diseases in animals. The instrument ensures that the subordinate legislation applicable in Wales which relates to control and prevention of exotic diseases in animals will continue to be operable in Wales after the United Kingdom leaves the European Union.

1.2. The instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ("the 2018 Act") defines as 29 March 2019 at 11.00 pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1. This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 ("the 2018 Act").

2.2. As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

2.3. The CLA Committee considered a draft of these regulations on 28 January 2019 and agreed that the negative procedure is appropriate for these regulations. A copy of the published CLA report can be accessed via the following link: http://www.assembly.wales/laid%20documents/cr-ld12093/cr-ld12093-e.pdf

3. Legislative background

3.1. This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum

4. Purpose and intended effect of the legislation
What did any relevant EU law do before exit day?

4.1. The ten instruments that are subject to these deficiency amendments are listed below together with the Directives/EU Regulations which are implemented by the instruments:

(i) The Foot and Mouth Disease (Wales) Order 2006 (which implements, in part, Council Directive 2003/85/EC of the 29 September 2003 on Community measures for the control of foot and mouth disease.)

(ii) The Foot-and-Mouth Disease (Control of Vaccination) (Wales) Regulations 2006 (which implement those aspects of Council Directive 2003/85/EC on Community measures for the control of foot and mouth disease that relate to vaccination against foot and mouth disease

(iii) The Avian Influenza (Preventive Measures) (Wales) Regulations 2006 (which implement provisions requiring or dependant on the identification of poultry premises under Council Directive 2005/94/EC on Community measures for the control of avian influenza and repealing Directive 92/40/EC.)

(iv) The Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006 (which implements Council Directive 2005/94/EC on Community measures for the control of avian influenza and repealing Directive 92/40/EC, and partly implements in part (a) Commission Decision 2005/734/EC laying down biosecurity measures to reduce the risk of transmission of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 from birds living in the wild to poultry and other captive birds and providing for an early detection system in areas at particular risk and Commission Decision 2006/474/EC concerning measures to prevent the spread of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 to birds kept in zoos and approved bodies, institutes and centres in the Member States and repealing Decision 2005/744/EC.)

(v) The Avian Influenza (Vaccination) (Wales) (No.2) Regulations 2006 (which implement Council Directive 2005/94/EC on Community measures for the control of avian influenza repealing Directive 92/40/EEC (OJ No L10, 14.1.2006, p 16) insofar as it deals with vaccination against avian influenza.)

(vi) The Avian Influenza (H5N1 in Poultry) (Wales) Order 2006 (which implements Commission Decision 2006/415/EC concerning certain protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in poultry in the Community and repealing Decision 2006/135/EC.)

(vii) The Bluetongue (Wales) Regulations 2008 (which implement Council Directive 2000/75/EC laying down specific provisions for the control and eradication of bluetongue.)

(viii)The Products of Animal Origin (Disease Control) (Wales) Regulations 2008 (which implement Articles 3 and 4 of Council Directive 2002/99/EC laying down the animal health rules governing the

production, processing, distribution and introduction of products of animal origin for human consumption.)

(ix) The Poultry Compartments (Wales) Order 2010 (which implements Commission Regulation (EC) No 616/2009 which makes provision for the recognition of poultry compartments which meet high standards of biosecurity.)

(x) The African Horse Sickness (Wales) Regulations 2013 (which implement the provisions of Council Directive 92/35/EEC laying down control rules and measures to combat African horse sickness.)

4.2. These instruments deal with the controls for exotic notifiable diseases, where owners and their veterinarians are obliged to notify Welsh Government of suspicion of the relevant disease. The instruments also cover preventative measures, vaccination and products of animal origin.

4.3. These instruments ensure that if there is an outbreak of such disease (including Foot and Mouth Disease, Bluetongue or Avian Influenza), the Welsh Government is able to respond in a timely, effective and coordinated manner to control and eradicate disease, demonstrate disease freedom, restore normal trade in the affected species and then work to assist the recovery of local communities.

Why is it being changed?

4.4. The minor and technical changes made by the instrument are necessary to ensure that the amended instruments continue to operate effectively following the UK's withdrawal from the European Union.

4.5. The changes are made to ensure the operability of the ten amended instruments by, for example, the omission of references to the European Commission which will no longer be relevant after exit day; the omission of references to "intra-Community trade"; and amendments which correct references which are characterised by their inclusion of Wales as a constituent nation of a "Member State", or, likewise, by the exclusion of Wales from the ambit of a "third country".

What will it now do?

4.6. The instrument will ensure that Wales will continue to be able to respond to outbreaks of exotic notifiable animal disease as before. There are no policy changes introduced in this instrument.

5. Consultation

5.1. As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative

and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

6.1. An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)”. This is the case because the changes being made are technical in nature and make no substantive changes to how the ten instruments included in the Regulations operate.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is because the provisions ensure that protections provided by The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 continue to be operable after the UK leaves the European Union.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, has made the following statement(s) “The [draft] instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Minister for Environment, Energy and Rural Affairs, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.3 “In relation to the instrument, I, Lesley Griffiths have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

Agenda Item 4.12

SL(5)362 - The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 amend the existing implementation of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of GMOs ("the Deliberate Release Directive"). The Directive specifies a framework of controls on the release of GMOs, both for trial purposes and for placing on the market.

Under the Directive, proposed releases require prior authorisation, based on the GMO in question passing a scientific assessment of its potential impact on human health and the environment. In the case of releases for trial, the decision whether to approve lies with Member States, and, in the UK, these decisions are devolved, including to Wales. By contrast, decisions on GMO releases for commercial marketing are currently taken collectively at EU level. The Directive also deals specifically with GMO seeds for cultivation: in this regard, the Directive allows Member States to block cultivation in their territory, despite the seeds having EU approval. Decisions on this matter are also devolved to Wales.

The Directive is implemented in Wales by The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 ("the 2002 Deliberate Release Wales Regulations").

The Regulations under scrutiny also amend the Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005 ("the 2002 Transboundary Movements Wales Regulations"), which govern the export of GMOs from Wales, as part of the EU, to third (non-EU) countries. The key requirement is for the planned first export of a GMO intended for environmental release to be notified to the receiving country for approval before shipment.

The 2002 Transboundary Movements Wales Regulations currently implement, in Wales, Regulation (EC) No. 1946/2003 of the European Parliament and of the Council of 15 July 2003. This EU Regulation, in turn, implements an international treaty (to which the EU and UK are each a Party), the Cartagena Biosafety Protocol to the United Nations Convention on Biological Diversity Regulation.

Most of the amendments to these two Wales statutory instruments are made under powers in paragraph 1(1) of Schedule 2, and paragraph 21 of Schedule 7, to the EUWA. Paragraph 1(1) of Schedule 2 gives the Welsh Ministers the power to address, within devolved competence, failures of retained EU law to operate effectively, and other deficiencies in retained EU law, arising from the UK's withdrawal from the European Union. Paragraph 21 of Schedule 7 gives Welsh Ministers the power to make provision that is supplementary, consequential, incidental,

transitional, transitory or saving, when addressing those failures or deficiencies, including the power to restate any retained EU law in a clearer or more accessible way.

The Wales statutory instruments amended by these Regulations constitute retained EU law for the purposes of section 2 of the European Union (Withdrawal) Act 2018 ("EUWA"). The EU Regulations and Decisions referred to in these Regulations also constitute retained EU law, under section 3 of the EUWA.

Some amendments made do not, however, arise out of the UK's withdrawal from the EU, but, rather, correct out of date references. These amendments are made using powers given under section 2(2) of the European Communities Act 1972 ("the ECA"). Although that Act will be repealed on exit day by section 1 of the EUWA, the amendments made to domestic legislation will continue to have effect, by virtue of section 2 of that Act.

The amendments made by the Regulations under scrutiny can be broadly categorised as:

- Removing references to provisions being 'in accordance with [particular EU legislation]', and other references to EU law or obligations, and instead referring to that EU law or those obligations as they are transformed into retained EU law by virtue of the EUWA;
- Copying out definitions within EU instruments, so that they become part of domestic legislation, instead of defining terms by reference to those EU instruments; alternatively, specifying that references should be to specific 'versions' of pieces of EU legislation, so that post-Brexit changes to that legislation will not read across;
- Updating references to other sets of legislation that will be changed following EU exit or where references were simply to an out of date piece of legislation;
- Changing references from EU law concepts to UK ones, e.g. changing 'Member State level' to 'any law of any part of the UK'; and
- Removing provisions which requires Welsh Ministers to take action on an EU level, such as to notify the Commission or other EU Member States.

Procedure

Negative.

Technical Scrutiny

11 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires, or Standing Order 21.2(ii) – that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made

1.1 Regulation 3(10(a)

1.1.1 Regulation 3(10)(a) substitutes (inter alia) a new paragraph (4) in regulation 25 of the 2002 Deliberate Release Wales Regulations. Regulation 25 of the 2002 Deliberate Release Wales Regulations deals with consent to market GMOs, and the original paragraph (4) provided that

the maximum period for which the National Assembly (now, the Welsh Ministers) could grant consent was 10 years. The amendments made by these regulations appear to remove that cap on consent periods.

1.1.2 We cannot immediately see how the cap would cause a failure of retained EU law to operate effectively, or other deficiency in retained EU law, arising from the UK's withdrawal from the European Union; and therefore we cannot see how removing the cap falls within the powers given to the Welsh Ministers by paragraph 1(1) of Schedule 2 to the EUWA. Moreover, we consider that removing a cap on GMO consent periods cannot be said to fall within the power in paragraph 21 of Schedule 7 to the EUWA; it does not appear to us to be supplementary, consequential, incidental, transitional or transitory provision.

1.2 Regulation 3(16)(b)

1.2.1 This provision inserts a new paragraph (3A) into regulation 35 of the 2002 Deliberate Release Wales Regulations, which deals with data to be included on a public register of information about GMOs, maintained by the Welsh Ministers under section 122 of the Environmental Protection Act 1990 (and under obligations in and under the Deliberate Release Directive).

1.2.2 New paragraph (3A) will mean that additional information will be placed on a public register when someone applies for permission to market a GMO. Confidential information is, however, exempt.

1.2.3 We note that applications for permission to market will, post-Brexit, be decided by the Welsh Ministers, not the European Commission. For that reason, we understand why new sub-paragraph (3A)(e) is appropriate; it makes administrative sense for the Welsh Ministers to assign an application reference code to each application and to link this to any information about that application on the register. Therefore, we see sub-paragraph (3A)(e) as covered by the incidental powers provided by paragraph 21 of Schedule 7 to the EUWA.

1.2.4 In relation to the other sub-paragraphs, however, we are less clear as to vires. The provisions do not appear to be required by pre-Brexit EU law, and therefore the powers given by the ECA do not seem relevant. In terms of the powers provided by the EUWA, we would expect these to be used to replace, as closely as possible, any obligations on the Commission to put information about applications to market GMOs in the public domain.

1.2.5 However, it appears to us that the Commission's obligations in this regard are to publish the summary information provided by the applicant, together with the Member State's assessment of the application, if favourable. Clearly, the second part of this obligation will fall away once the Welsh Ministers become the final decision-taker and so it is appropriate not to replicate this in the regulations. But the first part of the obligation appears to be transferred to the Welsh Ministers by new sub-paragraph (i), inserted into regulation 35(3). At first sight, this would appear to us appropriate to prevent any failure in retained EU law to operate effectively, arising out of the UK's withdrawal from the EU (taken together with the new provision in sub-paragraph (3A)(e)).

1.2.6 We wish to emphasise that we are very supportive of the aim of transparency in Welsh Minister decisions, and particularly so on subjects that directly affect all citizens of Wales, such as the availability of GMOs on the market. However, what we are concerned with here is

vires to ensure that transparency. If new paragraph (3A)(a)-(d) and (f)-(g) go further than giving the Welsh Ministers duties which mirror the present Commission obligations to publish, it is difficult to see how this is covered either by the powers in paragraph 1 of Schedule 2 to the EUWA, or the supplemental ones in paragraph 21 of Schedule 7. Therefore we would ask the Welsh Ministers to clarify these matters so as to remove any doubt about vires.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

2.1 Regulation 3(2)(a) and (f), amending definitions contained in regulation 2(1) of the 2002 Deliberate Release Wales regulations

2.1.1 Regulation 3(2)(a) changes the definition of an "approved product", for the purposes of permission to be marketed in Wales. Essentially, the present definition of an "approved product" becomes the definition of a "pre-exit approved product", by virtue of a new definition inserted into regulation 2(1) of the 2002 Deliberate Release Wales regulations by regulation 3(2)(f) of the present Regulations.

2.1.2 The new definition of an "approved product" is, in essence a product that has either been given consent by the Welsh Ministers under section 111(1) of the Environmental Protection Act 1990, or authorised under Regulation 1829/2003 EC, known (and referred to in the present regulations) as the Food and Feed Regulation.

2.1.3 The Food and Feed Regulation will pass into domestic law on exit day, by virtue of section 3 of the EUWA. Regulation 3 of the present regulations will not come into force until exit day. Therefore, for the purposes of post-Brexit Welsh law, authorisation under the Food and Feed Regulation appears to mean an authorisation granted after exit day. This is also logical in view of the creation of a separate definition for "pre-exit approved product[s]".

2.1.4 However, this raises two issues. First, the Food and Feed Regulation is already in force. Further explanation is requested as to why the definition of a "pre-exit approved product" does not include products approved under that Regulation before exit day.

2.1.5 The second issue is a Merits point and is reported below under Standing Order 21.3(ii).

2.2 Regulation 3(6)(b) and (c), amending regulation 17(2)(g) and (j) of the 2002 Deliberate Release Wales Regulations

2.2.1 These provisions update the references to documents setting out the format for applications for consent to market GMOs, where those applications are made to the Welsh Ministers. They are, therefore, important provisions for applicants. Regulation 3(6)(b) provides that applicants must provide a monitoring plan prepared, inter alia, according to a format set out in the Annex to Commission Decision 2002/811/EC.

2.2.2 The application forms set out in that Annex refer in a number of places to the European Community (now, of course, the European Union) and to the European Commission. In particular, they require an applicant to describe, as part of the monitoring plan that forms a mandatory part of the application, the conditions in which the applicant will report to the

Commission. More explanation is required as to why and how the format set out in this Annex is appropriate for post-Brexit applications for consent to the Welsh Ministers.

2.2.3 Regulation 3(6)(c) relates to the mandatory summary which has to form part of the application. We raise, below, the point that the document identified in regulation 3(6)(c) as setting out the format for this summary appears not to be the correct one. For the purposes of this reporting point, we will assume that the intention was to mandate applicants to follow the format set out in the Annex to Council Decision 2002/812 EC.

2.2.4 That Annex also includes a number of references to the EC (*sic*) which appear to require further explanation. For instance, applicants are required to state whether their product is being notified to another "Member State", and whether another product with the same combination of GMOs has been placed on the "EC market" by another person. In the latter case, it is not clear to us how applicants will have this information after the UK leaves the EU. Applicants are also required to provide an estimate of the demand in export markets for "EC supplies" of the product (pre-Brexit, UK supplies would of course have counted as EC supplies but will not do so post-Brexit).

2.3 Regulation 3(8)(b), amending regulation 22(6) of the 2002 Deliberate Release Wales Regulations

Our concerns about this provision are similar to those set out in 1.2. Applicants are required, by the new provision, to provide information in a format set out in the Annex to a Commission Decision (2003/71/EC). That Annex makes various references that appear difficult to operate post-Brexit, including a requirement for applicants to quote a "European notification number".

2.4 Regulation 3(9)(a)(ii), amending regulation 24(1)(e) of the 2002 Deliberate Release Wales Regulations

2.4.1 This provision replaces regulation 24(1)(e) of the 2002 Deliberate Release Wales regulations with a new provision. The fact of replacement does not require further explanation, as the original provision places a duty on the Welsh Ministers *vis a vis* the European Commission, which will clearly no longer be operable after exit day. However, we consider that the placement of the new provision in regulation 24(1) does require some explanation. Regulation 24(1)(d) deals with the Welsh Ministers' duties to notify an applicant of their decision. The original 24(1)(e) dealt with action following that decision. However, the new 24(1)(e) requires the Welsh Ministers to take into account certain matters in taking their decision. Logically, therefore, it appears that the new regulation 24(1)(e) should precede regulation 24(1)(d), not follow it.

2.5 Regulation 3(16)(b) and (17), amending regulations 35 and 36 of the 2002 Deliberate Release (Wales) Regulations

2.5.1 As discussed above, regulation 3(16)(b) imposes duties on the Welsh Ministers to publish additional information in the public register concerning GMOs. However, regulation 3(17) does not amend regulation 36 of the 2002 Deliberate Release (Wales) Regulations so as to prescribe a deadline for the Welsh Ministers to do so. It may be that it was not the Welsh Ministers' policy intention to impose such a deadline on themselves. However, regulation 36 of the 2002 Deliberate Release (Wales) Regulations does so for all the other categories of

information listed in regulation 35 (although the amendments made by the regulations under scrutiny lift those deadlines in relation to pre-Brexit decisions of the European Commission or other Member States).

2.5.2 Further explanation of the absence of a deadline for publication of the relevant information is, therefore, requested.

2.6 Throughout regulation 3

2.6.1 A number of the amendments made by regulation 3 have the effect that the 2002 Deliberate Release Wales regulations will use two different names to refer to what is now the same legal person, i.e. "the [former] National Assembly for Wales" and "the Welsh Ministers". All these references are to be interpreted as references to the Welsh Ministers, by virtue of paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006. However, that will not be immediately apparent to those seeking to understand the legislation. In certain places, both names will appear in the same provision – for instance, in regulation 24 of the 2002 Deliberate Release Wales regulations (see regulation 3(9)(a) of the regulations under scrutiny).

2.6.2 In our view, the Welsh Ministers would have had the vires to change all references to the National Assembly into references to themselves, where appropriate, under paragraph 21 of Schedule 7 to the EUWA, as they would be supplementary or incidental to provision made under paragraph 1(1) of Schedule 2 to that Act, and would restate retained EU law (the Wales statutory instruments amended) in a clearer and more accessible way.

2.6.3 However, we understand that the Welsh Government is working under severe pressure to make all the essential amendments to retained EU law, as it applies in Welsh devolved competence, before exit day and that it may not always have been practicable to make amendments that were, arguably, desirable without being necessary for post-exit operability.

2.6.4 We also request further explanation of the rationale behind amendments to the way in which some EU legislation is referred to in the regulations. This legislation will become retained EU law on exit day, by virtue of the EUWA.

2.6.5 Regulation 3(2)(e) provides that references in the 2002 Deliberate Release Wales regulations to the First Simplified Procedure (crop plants) Decision is a reference to that Decision as it applied immediately before exit day. However, the regulations do not amend other references to retained direct EU law in the 2002 Deliberate Release Wales regulations in that way (for instance, the references, in regulation 2 of those regulations, to the Food and Feed Regulation, Council Regulation 1829/2003/EC).

2.6.6 Nor are new references in the regulations to retained direct EU law (EU Regulations and Decisions) treated in this way (see for instance the reference to Council Decision 2002/813/EC, inserted by regulation 3(4)(b)).

2.6.7 It appears to us that all of these references to EU legislation – whether existing in or newly inserted into the 2002 Deliberate Release Wales regulations - will be treated as references to the EU legislation as it applied immediately before exit day, by virtue of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019, currently in draft. This is because none of the references are "ambulatory"

(i.e. they are not stated to be references to the EU instruments as amended from time to time by the EU institutions; nor are they stated to be references to those instruments as they applied at a particular time prior to exit day). Indeed, it would be outside the EUWA powers to render new references in domestic law to EU instruments ambulatory in this sense; the EUWA does not give Ministers powers to track future EU-law developments in this way, in subordinate legislation.

2.6.8 Further explanation of the rationale for the Welsh Ministers choosing to make provision of the kind of regulation 3(2)(e) in some cases and not others is therefore requested in the interests of transparency, both for the Assembly and the users of the legislation.

2.7 Regulation 4 – amendments to the Schedule to the 2005 Transboundary Movements Wales regulations

2.7.1 Many provisions of the 2005 Transboundary Movements Wales regulations are dependent on "the specified Community provisions", i.e. those provisions of Regulation (EC) No. 1946/2003 listed in the Schedule to the regulations. For example, regulation 3 provides that the National Assembly (now, the Welsh Ministers) must enforce and execute the specified Community provisions, while regulation 8 provides that it is an offence for anyone to contravene, or fail to comply with, the specified Community provisions. Therefore, the exact meaning of the specified Community provisions is extremely important.

2.7.2 Regulation 4 of the regulations under scrutiny amends the description of two of the "specified Community provisions" in the Schedule. Both of the amendments appear, in themselves, appropriate in terms of adapting the 2005 Transboundary Movements Wales regulations in consequence of the UK leaving the EU. One simply removes a reference to "the Commission", while the other amends the rules on what authorisations are necessary to export GMOs for direct use as food or feed or for processing. Previously, authorisation for import into a particular country could have been agreed within the EU; the regulations under scrutiny replace this from exit day with a provision that permission to market in the UK is sufficient.

2.7.3 However, it is not clear to us how these amendments are effective unless the relevant provisions of Regulation No. 1946/2003 itself are amended in the same way, as retained EU law. The provisions in the Schedule to the 2005 Transboundary Movements Wales regulations are defined as provisions of that Regulation. In light of that definitional link it seems to us dubious that the effect of those provisions, for the purposes of the 2005 Regulations, can be altered simply by amending the Schedule, and not the underlying EU Regulation (as it will exist in domestic law after exit day). Once again, we emphasise that non-compliance with the provisions of the Schedule constitutes an offence; the second example given in the previous paragraph is an example of a situation where this could be directly relevant.

2.7.4 We recognise that the issue we have identified may be being avoided or rectified by other Brexit-related legislation. However, as we said in our recent report on The Common Agricultural Policy (Miscellaneous Amendments)(Wales)(EU Exit) Regulations 2019, we consider that it is incumbent on the Welsh Government to seek to explain, better and more fully, to the Assembly and to citizens how each piece of Welsh EU exit legislation fits into the whole picture of UK and EU legislation – current and intended - on the particular subject-

matter. The appropriate place for this would appear to be the EM accompanying statutory instruments.

2.7.5 Moreover, as we have repeatedly said in previous Reports, clarity in the criminal law is of particular importance. For all these reasons, therefore, we call on the Welsh Government to provide a further explanation of these provisions.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

3.1 Regulation 3(6)(c)

As set out above, this provision changes the document which sets out the format for applications for deliberate release authorisations. It is, therefore, an important provision for applicants. It provides that the correct format is that set out in "the Annex to Commission Decision 2002/812 EC". However, there appears to be no Commission Decision with that number. There is, however, a Council Decision with that number, the Annex to which appears to be the relevant document.

3.2 Regulation 3(10)(b)(ii)

This provision amends regulation 25(5) of the 2002 Deliberate Release Wales regulations. It refers to "regulation (3) of the Seeds (National Lists of Varieties) Regulations 2001". This is clearly an incorrect reference, as regulations are not identified by numbers in brackets. Having considered the 2001 Regulations referred to, it appears to us that the intention was to refer to "regulation 3". We consider that this is simply a typographical error and that there is no real risk of confusion with another provision of the 2001 statutory instrument. However, it should be corrected so as to remove any doubt for users of the legislation.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

4.1 Regulation 3(2)(a) and (f), amending regulation 2(1) of the 2002 Deliberate Release Wales Regulations

4.1.1 This point relates to the amendments made by regulation 3(2)(a) and (f) to the definition of an "approved product" in the 2002 Deliberate Release Wales regulations, for the purposes of permission to be marketed in Wales. Detail of these two provisions is set out above, under paragraph 2.1, relating to Standing Order 21.1(v).

4.1.2 These provisions also raise a merits point. The Food and Feed Regulation gives the function of authorising products for marketing to the European Commission, assisted by an EU Committee, and on the basis of a scientific opinion from the European Food Safety Authority ("EFSA"). If the Food and Feed Regulation, once imported into domestic law on exit day, is not amended in that regard, the Commission will be able to continue giving authorisations that

are recognised in the UK, including in Wales. This would be consistent with the overall intention of the EUWA, to maintain continuity, as far as practicable and for the time being, between pre- and post-Brexit law derived from the EU.

4.1.3 However, it is of political importance that marketing certificates for food and feed products made of, or including, genetically-modified ingredients, issued by an EU body, will continue to be recognised in Wales after Brexit. This is particularly so given the controversy within the UK and in Wales over the safety or otherwise of genetically-modified food.

4.1.4 We recognise that the Food and Feed Regulation may have been, or may be about to be, amended in some relevant way, as retained EU law, by UK Government subordinate legislation under the EUWA. We also recognise the difficulties facing the Welsh Ministers in seeking to legislate under extreme time pressure and in a context in which a great deal of other related legislation is also being made, both by them and by the UK Government.

4.1.5 However, we consider that, where such independencies exist between different pieces of legislation, made or to be made, in such an important area of law, they should be explained, or at least pointed to, in the Explanatory Memorandum accompanying the subordinate legislation for scrutiny.

Implications arising from exiting the European Union

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

The last sentence of paragraph 4.5 of the Explanatory Memorandum states:

Wales intends to follow England, Northern Ireland and Scotland's approach on the release of GMO's.

This may be simply a question of infelicitous language, but we do not consider that the Welsh Government should simply "follow" the approach of other nations of the UK; particularly on such an important and controversial matter. "Following" is a very different matter from agreeing a common approach with the governments of those other nations. We note that the Intergovernmental Agreement between the Welsh and UK Governments of 24 April 2018 identified "Agriculture - GMO marketing and cultivation", as well as various matters concerning food, as areas where both governments would agree that common UK frameworks – legislative or otherwise - were likely to be required, and we assume that the sentence highlighted above is attempting to reflect this agreement.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 379 (W. 94)

EXITING THE EUROPEAN UNION, WALES

ENVIRONMENTAL PROTECTION, WALES

The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c. 68) and paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which applies in relation to Wales, relating to the control and regulation of the deliberate release, placing on the market and transboundary movements of genetically modified organisms.

Part 2 of these Regulations corrects certain out of date references in Welsh subordinate legislation, with effect prior to exit day, in reliance on powers of the Welsh Ministers under section 2(2) of the European Communities Act 1972.

Part 3 of these Regulations makes various amendments to Welsh subordinate legislation in order to correct failures of retained EU law to operate effectively and other deficiencies arising from withdrawal from the European Union.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a Regulatory Impact Assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2019 No. 379 (W. 94)

EXITING THE EUROPEAN UNION, WALES

ENVIRONMENTAL PROTECTION, WALES

The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Sift requirements satisfied *18 February 2019*

Made *26 February 2019*

Laid before the National Assembly for Wales *27 February 2019*

Coming into force in accordance with regulation 1(2) and (3)

The Welsh Ministers are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the control and regulation of the deliberate release, placing on the market and transboundary movements of genetically modified organisms.

The Welsh Ministers make the following Regulations in exercise of the powers conferred by—

(**1**) S.I. 2003/2901. By virtue of paragraphs 28(1) and 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32), S.I. 2003/2901 has effect as if made under section 59(1) of that Act.

(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(a) in relation to Part 1, the provisions referred to in paragraphs (b) and (c);

(b) in relation to Part 2, section 2(2) of the European Communities Act 1972;

(c) in relation to Part 3, paragraph 1(1) of Schedule 2 and paragraph 21(a) of Schedule 7 to, the European Union (Withdrawal) Act 2018(**1**).

The requirements of paragraph 4(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 relating to the appropriate National Assembly for Wales scrutiny procedure for these Regulations have been satisfied.

PART 1

Introduction

Title, commencement and application

1.—(1) The title of these Regulations is the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(2) Parts 1 and 2 of these Regulations come into force 21 days after the day on which these Regulations are laid.

(3) Part 3 of these Regulations comes into force on exit day.

(4) These Regulations apply in relation to Wales.

PART 2

Amendments to out of date references

Amendments to the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002

2.—(1) The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002(**2**) are amended as follows.

(2) In regulation 16 omit paragraph (f).

(3) Omit regulations 18 and 18A.

(4) In Schedule 3, paragraph 1 for the words "and any specific identification" substitute "the unique identifier assigned in accordance with Regulation 65/2004, and any other".

(**1**) 2018 c.16.

(**2**) S.I. 2002/3188 (W.304), amended by S.I. 2005/1913 (W.156), 2011/1043, 2013/755 (W.90), 2018/1216 (W.249).

PART 3

Amendments to subordinate legislation relating to withdrawal from the European Union

Amendments to the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002

3.—(1) The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 are amended as follows.

(2) In regulation 2(1)—

(a) for the definition of "approved product" (*"cynnyrch wedi'i gymeradwyo"*) substitute—

""approved product" *("cynnyrch wedi'i gymeradwyo")* means a product permitted to be marketed in Wales by—

(a) a consent granted by the Welsh Ministers under section 111(1) of the Act, or

(b) an authorisation under the Food and Feed Regulation;";

(b) omit the definition of "the Commission" (*"y Comisiwn"*);

(c) omit the definition of "the Contained Use Directive" (*"y Gyfarwyddeb Defnydd Amgaeëdig"*);

(d) for the definition of the "Deliberate Release Directive" substitute—

"the Deliberate Release Directive" (*"y Gyfarwyddeb Defnydd Amgaeëdig"*) means Council Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms(**1**) as it applied immediately before exit day;";

(e) in the definition of "the First Simplified Procedure (crop plants) Decision", insert at the end "as it applies immediately before exit day";

(f) in the appropriate place insert—

""pre-exit approved product" *("cynnyrch wedi'i gymeradwyo cyn y diwrnod ymadael")* means a product which immediately before exit day was permitted to be marketed by a consent granted in accordance with Article 15(3), 17(6) or

(**1**) OJ No L 106, 17.4.2001, p. 1 as last amended by Commission Directive (EU) 2018/350 (OJ No L 67, 9.3.2018, p. 30).

18(2) of the Deliberate Release Directive or Article 13(2) or (4) of the 1990 Directive;".

(3) In regulation 10, omit the words from "release is" to "or in which".

(4) In regulation 12(1)(d)—

(a) omit the words from ", in the format" to "Directive";

(b) at the end, insert ", in the relevant format set out in the Annex to Council Decision 2002/813/EC".

(5) In regulation 16—

(a) the existing text becomes paragraph (1);

(b) in the new paragraph (1), after sub-paragraph (a) insert—

"(aa) a pre-exit approved product is marketed during the relevant period for a use for which it had approval before exit day and in accordance with the limitations and conditions to which the use of that product was subject before exit day;";

(c) for sub-paragraphs (b) and (c) substitute—

"(b) genetically modified organisms are made available for activities regulated under the Genetically Modified Organisms (Contained Use) Regulations 2014(**1**);";

(d) in sub-paragraph (d) at the end insert "or";

(e) for sub-paragraph (e) substitute—

"(e) a genetically modified organism is marketed which is contained in a medicinal product authorised under the Human Medicines Regulations 2012(**2**) or the Veterinary Medicines Regulations 2013(**3**).";

(f) omit sub-paragraph (g);

(g) after new paragraph (1) insert—

"(2) For the purposes of paragraph (1)(aa), "the relevant period" in relation to a pre-exit approved product, means the period beginning with exit day, and ending on the day on which the consent concerned ceases to be valid.".

(6) In regulation 17(2)—

(a) in sub-paragraph (b)—

(**1**) S.I. 2014/1663

(**2**) S.I. 201/1916, amended by S.I. 2013/235, 2013/1855, 2013/2593,2014/323, 2014/324, 2014/490, 2014/1878, 2015/178, 2015/259, 2015/354, 2015/903, 2015/1503, 2015/1862, 2015/1879, 2016/186, 2016/190, 2016/696, 2017/715, 2017/1322, 2018/199, 2018/378.

(**3**) S.I. 2013/2033, amended by S.I. 2014/599, 2018/761.

(i) for "European Union" substitute "United Kingdom";

(ii) omit the words from "or to another competent authority" to the end;

(b) in sub-paragraph (g), after "Directive" insert ", as read with the guidance notes set out in Commission Decision 2002/811/EC,";

(c) in sub-paragraph (j) for the words from "established by the Commission" to the end, substitute "set out in the Annex to Commission Decision 2002/812/EC".

(7) In regulation 21—

(a) omit sub-paragraph (c);

(b) in sub-paragraph (f) omit the words from "and any comments made" to the end.

(8) In regulation 22—

(a) in paragraph (3) omit "and shall ensure that its decision is communicated to the Commission";

(b) for paragraph (6) substitute—

"(6) Information submitted in accordance with paragraph (5) must be provided in the format set out in the Annex to Commission Decision 2003/701/EC.".

(9) In regulation 24—

(a) in paragraph (1)—

(i) for sub-paragraph (b) substitute—

"(b) invite any person, by means of a request placed on the register, to make representations to the Welsh Ministers relating to any risks of damage being caused to the environment by the marketing, before the end of a period to be specified which is not less than 60 days from the date the application was received by the Welsh Ministers;";

(ii) for sub-paragraph (e) substitute—

"(e) take into account any representations relating to risks of damage being caused to the environment by the marketing, made to the Welsh Ministers before the end of the period specified in accordance with paragraph (b);";

(b) omit paragraph (2);

(c) in paragraph (3), for "paragraphs (1) and (2)" substitute "paragraph (1)";

(d) omit paragraph (4).

(10) In regulation 25—

(a) for paragraphs (1) to (4) substitute—

"(1) The Welsh Ministers must not grant an application for consent to market genetically modified organisms under section 111(1) of the Act as it relates to the protection of human health without the agreement of the Health and Safety Executive.

(2) The Welsh Ministers must not grant or refuse an application for consent to market genetically modified organisms before the end of the period specified for representations in accordance with regulation 24(1)(b) and (e) above and, if any representations referred to in regulation 24(1)(e) are received within that period, before the Welsh Ministers have considered those representations.

(3) The Welsh Ministers must communicate a decision on an application for a consent to market genetically modified organisms to the applicant before the end of a period of 90 days beginning with the day on which the application was received and must include in the communication of any refusal to grant a consent, the reason for that refusal.

(4) The period referred to in paragraph (3) does not include—

(a) any period beginning with the day on which the Welsh Ministers give notice in writing under section 111(6) of the Act that further information in respect of the application is required and ending on the day on which that information is received by the Welsh Ministers, or

(b) any period during which the Welsh Ministers are considering representations submitted by any persons in accordance with regulation 24(1)(b), provided that such consideration does not prolong the 90 day period referred to in paragraph (3) by more than 30 days.";

(b) in paragraph (5)—

(i) omit "under the relevant EU provisions";

(ii) for the words from "an official national catalogue" to the end, substitute "a National List in accordance with regulation (3) of the Seeds (National Lists of Varieties) Regulations 2001(**1**)";

(c) in paragraph (6), for the words from "an official national register" to the end substitute

(**1**) S.I. 2001/3510, amended by S.I. 2004/2949, 2011/464, 2018/942: there are other amendments but none is relevant.

"the National Register in accordance with regulations 6 and 7 of the Forest Reproductive Material (Great Britain) Regulations 2002(**1**)".

(11) In regulation 26 omit paragraphs (1)(d) and (2).

(12) In regulation 27—

(a) for paragraph (1) substitute—

"(1) The Welsh Ministers must not grant an application for the renewal of a consent under section 111(1) of the Act to market genetically modified organisms as it relates to the protection of human health without the agreement of the Health and Safety Executive.";

(b) for paragraph (2) substitute—

"(2) The Welsh Ministers must communicate a decision on an application to renew a consent to market genetically modified organisms to the applicant as soon as possible and must include in any refusal of a consent the reasons for that decision.".

(13) In regulation 29(f) for the words from "the reports of" to "Member States" substitute "monitoring reports in the relevant format set out in the Annexes to Commission Decision 2009/770/EC".

(14) For regulation 32 substitute—

"32 Variation or revocation of a consent to market

(1) The Welsh Ministers may only vary or revoke a consent to market genetically modified organisms under section 111(10) of the Act without the agreement of the holder of the consent where new information has become available which the Welsh Ministers consider would affect the assessment of the risk of damage being caused to the environment by the release.

(2) The Welsh Ministers must not revoke or vary a consent to market genetically modified organisms under section 111(10) of the Act as it relates to the protection of human health without the agreement of the Health and Safety Executive.".

(15) In regulation 33—

(a) in paragraph (1), for "an approved" substitute "marketing a pre-exit approved";

(b) omit paragraphs (3) to (5).

(**1**) S.I. 2002/3026, to which there are amendments not relevant to these Regulations.

(16) In regulation 35—

(a) in paragraph (3)—

(i) in sub-paragraph (h) after "release of," insert ", or to market,";

(ii) after sub-paragraph (h) insert—

"(i) the summary of the information contained in the application required by regulation 12(1)(d) or, as the case may be, of the application required by regulation 17(2)(j).";

(b) after paragraph (3) insert—

"(3A) Subject to paragraph (4) and to the information concerned not being confidential, in relation to an application for a consent under section 111(1) of the Act to market genetically modified organisms—

(a) the name and address of the person who is responsible for the marketing, whether manufacturer, importer or distributor;

(b) the proposed commercial name of the product;

(c) the names of the genetically modified organisms in the product, including the scientific and common names of, where appropriate, the parental, recipient and donor organisms;

(d) the unique identifiers of the genetically modified organisms in the product;

(e) an application reference code assigned by the Welsh Ministers;

(f) the information included in the application as specified at paragraphs 3 and 7 of Schedule 3;

(g) information about stored samples of the genetically modified organisms, including the type of material, its genetic characterisation and stability, the amount of repository material and the conditions of appropriate storage and shelf-life.";

(c) in paragraph (7) after "granted" insert "before exit day";

(d) in paragraph (9) for "by the" substitute "before exit day by the European".

(17) In regulation 36 omit paragraphs (8) and (10).

(18) In Schedule 3—

(a) in paragraph 2, omit "in the European Union";

(b) in paragraph 5, omit "within the European Union";

(c) in paragraph 7, in the first sentence omit the words from "for the purposes" to "modifications in organisms,";

(d) in paragraph 8, omit "established in the European Union";

(e) in paragraph 14, for "the European Union" substitute "Wales".

(19) In Schedule 4 in paragraph 6, omit the words from ", and whether the views" to the end.

The Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005

4.—(1) The Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005(**1**) are amended as follows.

(2) In the Schedule—

(a) in Part 1, in the text in the second column in the row "Article 10(3)" for the words from "without authorisation" to the end substitute "which are not permitted to be marketed in the United Kingdom, or without authorisation to the import having been expressly agreed by the competent authority of the importing country.";

(b) in Part 2, in the text in the second column in the row "Article 6", in the second sub-paragraph, omit "and to the Commission".

(**1**) S.I. 2005/1912 (W. 155)

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
26 February 2019

Explanatory Memorandum to the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
27 February 2019

PART 1

1. Description

1.1 This instrument makes minor and technical changes to ensure the above legislation is operable in a UK-only context.

1.2 This instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 defines as 29 March 2019 at 11.00pm.

1.3 The instrument makes no policy changes to the way the existing legislation operates. All changes make only the technical drafting fixes required to maintain continuity of approach after EU-exit.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) (the "2018 Act") in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

2.2 It also (in exercise of the powers conferred by the European Communities Act 1972 (c.68)) makes amendments to the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 to include references to EEA states and Switzerland where appropriate.

2.3 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to the negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

2.4 The CLA Committee considered a draft of these regulations on 18 February 2019, and agreed that the negative procedure is appropriate for these regulations. A copy of the published CLA report can be accessed via the following link: http://www.assembly.wales/laid%20documents/cr-ld12192/cr-ld12192-e.pdf

3. Legislative background

3.1 This instrument is being made using the power in Part 1 of Schedule 2 to European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the

relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 This instrument amends our existing implementation of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of GMOs and repealing Council Directive 90/220/EEC ("the Deliberate Release Directive") which specifies a framework of controls on the release of GMOs. Proposed releases require prior authorisation and this is subject to the GMO in question passing a science-based assessment of its potential impact on human health and the environment. Decisions on whether to approve GMO trial releases are delegated to Member States and regions within Member States. In the UK GMO trial decisions are devolved. Decisions on the release of GMOs for commercial marketing are taken collectively at EU level. In the specific case of GMO seeds for cultivation, the Directive provides discretionary provisions which allow Member States, or devolved Governments with Member States, to block the cultivation of EU-approved seeds in their territory.

4.2 The Directive is implemented in Wales by:

- The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002

This instrument also amends our domestic implementation of Regulation (EC) No. 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms, as implemented in Wales by the Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005, which regulates the export of GMOs from the EU to third (non-EU) countries. The key requirement is for the planned first export of a GMO intended for environmental release to be notified to the receiving country to obtain its approval before shipment. The regulation implements requirements of the Cartagena Biosafety Protocol to the United Nations Convention on Biological Diversity (to which the EU and UK are each a Party).

Why is it being changed?

4.3 This instrument applies to policy areas which are a transferred matter for Welsh Ministers under the Government of Wales Act 1998. No change is being made to policy. This instrument provides the continued ability to ensure environmental protection in the UK when it leaves the EU.

4.4 The amendments can be broadly categorised as:

- Removing references to provisions being ‘in accordance with EU legislation’ and other references to EU law or obligations, and instead referring to retained EU law or obligations;
- Copying out definitions within the regulations themselves, instead of referring to definitions that sit within EU Directives, or specifying that references should be to specific ‘versions’ of pieces of EU legislation;
- Updating references to other sets of legislation that will be changed following EU exit or where an update was required anyway due to the reference being to an out of date piece of legislation;
- Changing references from ‘Member State level’ to ‘any law of any part of the UK’; and
- Modifying the provision which requires Welsh Ministers to notify ‘other EU Member States’ about transboundary environmental impacts to reflect Wales’ new status outside of the EU.

What will it now do?

4.5 The instrument will ensure that the legislation described above will operate effectively in the UK after we leave the EU. Existing processes for reaching decisions will be maintained. The release or marketing of genetically modified organisms will continue to need prior authorisation: approval to release, or market, a genetically modified organism will only be granted if a science-based assessment indicates that the safety of human health or the environment will not be compromised. Wales intends to follow England, Northern Ireland and Scotland’s approach on the release of GMO’s.

5. Consultation

5.1 No formal consultations were carried out in respect of the instrument as its purpose is to resolve operability issues in order to preserve and protect the existing policy regime- it will not introduce any new policy.

6. Regulatory Impact Assessment (RIA)

6.1 There is no, or no significant, impact on business, charities or voluntary bodies.

6.2 There is no, or no significant, impact on the public sector.

6.3 The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations. The instrument simply maintains existing laws in a way that works for Wales once the UK leaves the EU. No substantive policy changes will be brought in through this legislation.

Annex 1
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)”. This is the case because the changes being made are technical in nature and make no substantive changes to how the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 and the Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005 operate.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Genetically Modified Organisms (Deliberate Release and Transboundary Movements) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate”. This is the case because all changes being made are solely in order to address deficiencies arising from EU Exit”.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. This is because the provisions ensure that protections provided by The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 and The Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005 continue to be operable after the UK leaves the European Union.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

4.3 Little or no impact on equalities is expected.

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

Agenda Item 4.13

SL(5)364 – The Waste (Wales) (Miscellaneous Amendment) (EU Exit) Regulations 2019

Background and Purpose

This instrument makes amendments using powers under the European Union (Withdrawal) Act 2018 (except part 2 – see below) to the following legislation:

•The Waste (Wales) Measure 2010

•The Landfill Allowance Scheme (Wales) Regulations 2004

•The Hazardous Waste (Wales) Regulations 2005

•The Recycling Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011

The amendments are to ensure that the statute book remains functional following the UK's exit from the EU and will address deficiencies in Welsh domestic legislation arising from EU Exit.

Part 2 of the Instrument is made under section 2(2) of the European Communities Act 1972 and corrects out of date references to European law and domestic legislation prior to, and in readiness for the UK's exit from the EU. This is required because out of date references to legislation are not necessarily interpreted as references to the correct (updated) legislation and there is therefore a risk that the statute book would not work effectively and inaccessible post-Brexit.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 414 (W. 96)

EXITING THE EUROPEAN UNION, WALES

ENVIRONMENTAL PROTECTION, WALES

WASTE, WALES

The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations (except Part 2) are made in exercise of the powers in paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of waste. Part 3 amends primary legislation and Part 4 amends subordinate legislation.

Part 2 of these Regulations is made in exercise of the powers in section 2(2) of the European Communities Act 1972 (c. 68), and update references to Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3) and Directive 1999/31/EC on the landfill of waste (OJ No L 182, 16.07.1999, p1).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2019 No. 414 (W. 96)

EXITING THE EUROPEAN UNION, WALES

ENVIRONMENTAL PROTECTION, WALES

WASTE, WALES

The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019

Sift requirements satisfied *18 February 2019*

Made *28 February 2019*

Laid before the National Assembly for Wales *1 March 2019*

Coming into force in accordance with regulation 1(2)

The Welsh Ministers make these Regulations in exercise of the powers conferred by—

(a) in relation to Part 1, the powers mentioned in paragraphs (b) and (c);

(b) in relation to Part 2, section 2(2) of the European Communities Act 1972(**1**);

(c) in relation to the remainder of the Regulations, paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018(**2**).

(**1**) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), the Schedule, Part 1. It is prospectively repealed by the European Union (Withdrawal) Act 2018 (c. 16), section 1 from exit day (see section 20 of that Act).

(**1**) 2018 c.16.

The Welsh Ministers are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to—

(a) measures relating to the prevention, reduction and elimination of pollution caused by waste and the management of packaging and packaging waste(**2**);

(b) the prevention, reduction and management of waste(**3**).

The requirements of paragraph 4(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate National Assembly for Wales scrutiny procedure for these Regulations) have been satisfied.

PART 1

Introductory

Title and commencement

1.—(1) The title of these Regulations is the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019.

(2) They come into force as follows—

(a) as regards this Part and Part 2, 21 days after the day on which they are laid;

(b) as regards the remainder, on exit day.

PART 2

Amendments to out of date references

The Waste (Wales) Measure 2010

2.—(1) The Waste (Wales) Measure 2010(**4**) is amended as follows.

(2) In section 9(3), at the end insert ", as last amended by Council Directive 2011/97/EU(**5**)".

(**1**) By virtue of section 59(2) of the Government of Wales Act 2006, the Welsh Ministers may exercise the power conferred by section 2(2) of the European Communities Act 1972 in relation to any matter, or for any purpose, if they have been designated in relation to that matter or for that purpose.

(**2**) S.I. 2005/850, to which there is an amendment not relevant to these Regulations. By virtue of paragraph 28(1) of Schedule 11 to the Government of Wales Act 2006, S.I. 2005/850 has effect as if made under section 59(1) of that Act.

(**3**) S.I.2010/1552.

(**4**) 2010 nawm 8, to which there are amendments not relevant to these Regulations.

(**5**) OJ No L 328, 10.12.2011, p 49.

(3) In section 17(2), at the end insert ", as last amended by Council Regulation (EU) 2017/997(**1**)".

The Landfill Allowance Scheme (Wales) Regulations 2005

3.—(1) The Landfill Allowance Scheme (Wales) Regulations 2004(**2**) are amended as follows.

(2) In regulation 2(1), in the definition of "waste facility" ("*cyfleuster gwastraff*"), for "as last amended by Commission Directive (EU) 2015/1127" substitute "as last amended by Council Regulation (EU) 2017/997.

(3) In regulation 7(10), at the end insert "as last amended by Council Regulation 2011/97/EU.

The Hazardous Waste (Wales) Regulations 2005

4.—(1) The Hazardous Waste (Wales) Regulations 2005(**3**) are amended as follows.

(2) In regulation 47(5B), after "waste," insert "as last amended by Council Directive 2011/97/EU".

(3) In regulation 48(6B), after "waste," insert "as last amended by Council Directive 2011/97/EU".

The Recycling, Preparation for Re-use and Compositing Targets (Monitoring and Penalties) (Wales) Regulations 2011

5. In regulation 2(1) of the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011(**4**) in the definition of "the Waste Framework Directive" ("*y Gyfarwyddeb Fframwaith Gwastraff*") for "as last amended by Commission Directive (EU) 2015/1127" substitute "as last amended by Council Regulation (EU) 2017/997".

(**1**) OJ No L 150, 14.6.2017, p 1.

(**2**) S.I. 2004/1490 (W. 155), as amended by S.I. 2011/971 (W. 141); there are other amending instruments but none is relevant to these Regulations.

(**3**) S.I. 2005/1806 (W. 138), as amended by S.I. 2011/971 (W. 141) and S.I. 2018/721 (W. 140); there are other amending instruments but none is relevant to these Regulations.

(**4**) S.I. 2011/1014 (W. 152), amended by S.I. 2016/691 (W. 189); there are other amending instruments but none is relevant to these Regulations.

PART 3

Amendment of primary legislation

The Waste (Wales) Measure 2010

6.—(1) The Waste (Wales) Measure 2010(**1**) is amended as follows.

(2) In section 9(3) (as amended by regulation 3(2)), at the end insert—

", and read as if—

(a) in Article 2—

(i) for point (a) there were substituted—

"(a) 'waste' has the meaning given by Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive;";

(ii) for point (c) there were substituted—

"(c) 'hazardous waste' has the meaning given in Article 3(2) of the Waste Framework Directive. ";

(b) in Article 3(2), "Without prejudice to existing Community legislation," were omitted.".

(3) In section 9A(3)—

(a) in the definition of "waste incineration plant" (*"peiriant llosgi gwastraff"*), for "Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)" substitute "Industrial Emissions Directive";

(b) in the definition of "waste co-incineration plant" ("*peiriant cydlosgi gwastraff*") for "that Directive" substitute "the Industrial Emissions Directive";

(c) after subsection (3) insert—

"(4) In this section, "Industrial Emissions Directive" means "Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions(**2**), and read as if in Article 3—

(**1**) 2010 nawm 8. Section 9A was inserted by the Environment (Wales) Act 2016, s 67.

(**2**) OJ No L 334, 17.12.2010, p 17, as corrected by a corrigendum (OJ No L 158, 19.6.2012, p 25).

(a) in point (37), for "Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste" there were substituted "the Waste Framework Directive, as read with Articles 5 and 6 of that Directive";

(b) in point (38), for "Directive 2008/98/EC" there were substituted "the Waste Framework Directive.

(5) In reading the Industrial Emissions Directive in accordance with subsection (4), references in that Directive to the "Waste Framework Directive" (as inserted by subsection (4)) have the meaning given by section 17(2) of this measure.".

(4) In section 17—

(a) in subsection (2) (as amended by regulation 3(3)), at the end insert ", and read in accordance with subsections (3) to (8)";

(b) after subsection (2) insert—

"(3) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the Welsh Ministers, the Natural Resources Body for Wales or local authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of Wales.

(4) Article 2 is to be read as if—

(a) in paragraph 2—

(i) in the words before point (a), for "other Community legislation" there were substituted "retained EU law";

(ii) in points (b) and (c), for "Regulation (EC) No 1774/2002" there were substituted "Regulation (EC) No 1069/2009";

(iii) in point (d), for the words from "Directive 2006/21/EC" to the end there were substituted "the Mining Waste Directive (see section 17A) ";

(b) in paragraph 3, the words from "Without prejudice" to "Community legislation," were omitted;

(c) paragraph 4 were omitted.

(5) Article 5 is to be read as if paragraph 2 were omitted.

(6) Article 6 is to be read as if—

(a) paragraphs 1 to 3 were omitted;

(b) in paragraph 4—

(i) in the first sentence, for the words from "Where criteria" to "paragraphs 1 and 2" there were substituted "Except where waste ceases to be waste in accordance with Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013";

(ii) the second sentence were omitted.

(7) Article 7 is to be read as if—

(a) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) in the third sentence, for "shall be binding" there were substituted "shall, subject to paragraph 1A, be binding";

(b) after paragraph 1, there were inserted—

"**1A.** Paragraph 1 is subject to—

(a) a determination by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005(**1**) that a specific batch of waste is to be treated as hazardous waste;

(b) a decision made by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005(**2**) that a specific batch of waste is to be treated as non-hazardous waste;

(c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulations 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005(**3**);

(d) regulations (if any) made by the Welsh Ministers under section 62A(2) of the Environmental

(**1**) Regulation 8(1) has been amended by S.I. 2011/971 (W.141) and S.I. 2015/1417 (W.141).

(**2**) Regulation 9(1) has been amended by S.I. 2011/971 (W.141) and S.I. 2015/1417 (W.141).

(**3**) Regulations 8(2) and 9(2) has been amended by S.I. 2015/1417 (W.141)

Protection Act 1990 (lists of waste displaying hazardous properties)(**1**).";

(c) paragraphs 2, 3 and 5 were omitted;

(d) after paragraph 6 there were inserted—

"**6A.** In this Article, the "list of waste" means the list established by Commission Decision 2000/532/EC.";

(e) paragraph 7 were omitted.

(8) Annex 3 is to be read as if, in entry HP 9, in the second sentence, "in the Member States" were omitted."

(5) After section 17 insert—

"Meaning of the "Mining Waste Directive"

17A.—(1) In reading Article 2 of the Waste Framework Directive in accordance with section 17(4), "the Mining Waste Directive" (as inserted by paragraph (a)(iii) of section 17(4)) means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries(**2**), read in accordance with subsections (2) to (5).

(2) Article 2 is to be read as if—

(a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC(**3**) were a reference to that Article read in accordance with subsection (4);

(b) paragraphs 3 and 4 were omitted**.**

(3) Article 3(1) is to be read as if, for "Article 1(a) of Directive 75/442/EEC" there were substituted "Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive".

(4) For the purposes of subsection (2)(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(a) the first reference to "Member States" were a reference to the Welsh Ministers or the Natural Resources Body for Wales;

(**1**) 1990 c.43. Section 62A was inserted by S.I. 2005/894, and amended by S.I. 2011/988, 2015/1360, 2018/721 (W.140) and 2018/942.

(**2**) OJ No L 102, 11.4.2006, p 15, as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ No L 118, 18.7.2009, p 14).

(**3**) OJ No L 327, 22.12.2000, p 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p 32).

(b) at the end there were inserted—

"and "environmental objectives", in relation to a river basin district within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(**1**) has the same meaning as in those Regulations..

(5) In reading the Mining Waste Directive in accordance with subsection (3), the reference in that Directive, to the "Waste Framework Directive" (as inserted by subsection (3)) has the meaning given by section 17(2) of this measure.".

PART 4

Amendment of subordinate legislation

The Landfill Allowances Scheme (Wales) Regulations 2004

7.—(1) The Landfill Allowances Scheme (Wales) Regulations 2004(**2**) are amended as follows.

(2) In regulation 2(1)(**3**), in the definition of "waste facility" (*"cyfleuster gwastraff"*) (as substituted by regulation 4(2)), for "Directive 2008/98/EC of the European Parliament and of the Council on waste as last amended by Council Regulation (EU) 2017/997", substitute "the Waste Framework Directive".

(3) After the definition of "waste facility" (*"cyfleuster gwastraff"*) insert—

"the Waste Framework Directive" (*"y Gyfarwyddeb Fframwaith Gwastraff"*) means Directive 2008/98/EC of the European Parliament and of the Council on waste(**4**) as last amended by Council Regulation (EU) 2017/997(**5**), and read in accordance with paragraphs (3) to (9).

(4) After paragraph (2) insert—

"(3) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the Welsh Ministers, the Natural Resources Body for Wales or local authority which, immediately

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(**1**) S.I. 2017/407, to which there are amendments not relevant to these Regulations.
(**2**) S.I. 2004/1490 (W.155).
(**3**) The definition of Waste Facility has been amended by SI.2011/971 (W.141) and S.I. 2016/691 (W.189). There are other amendments but none is relevant.
(**4**) OJ No L 312, 22.11.08, p 3.
(**5**) OJ No L 150, 14.6.2017, p 1.

before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of Wales.

(4) Article 2 is to be read as if—

(a) in paragraph 2—

(i) in the words before point (a), for "other Community legislation" there were substituted "retained EU law";

(ii) in points (b) and (c), for "Regulation (EC) No 1774/2002" there were substituted "Regulation (EC) No 1069/2009";

(iii) in point (d), for the words from "Directive 2006/21/EC" to the end there were substituted "the Mining Waste Directive (see regulation 2A)";

(b) in paragraph 3, the words from "Without prejudice" to "Community legislation," were omitted;

(c) paragraph 4 were omitted.

(5) Article 5 is to be read as if paragraph 2 were omitted.

(6) Article 6 is to be read as if—

(a) paragraphs 1 to 3 were omitted;

(b) in paragraph 4—

(i) in the first sentence, for the words from "Where criteria" to "paragraphs 1 and 2" there were substituted "Except where waste ceases to be waste in accordance with Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013";

(ii) the second sentence were omitted.

(7) Article 7 is to be read as if—

(a) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) in the third sentence, for "shall be binding" there were substituted "shall, subject to paragraph 1A, be binding";

(b) after paragraph 1, there were inserted—

"**1A.** Paragraph 1 is subject to—

(a) a determination by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as hazardous waste;

(b) a decision made by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as non-hazardous waste;

(c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulations 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;

(d) regulations (if any) made by the Welsh Ministers under section 62A(2) of the Environmental Protection Act 1990 (lists of waste displaying hazardous properties).";

(c) paragraphs 2, 3 and 5 were omitted;

(d) after paragraph 6 there were inserted—

"**6A.** In this Article, the "list of waste" means the list established by Commission Decision 2000/532/EC.";

(e) paragraph 7 were omitted.

(8) Annex 3 is to be read as if, in entry HP 9, in the second sentence, "in the Member States" were omitted.

(9) In paragraph (3) "local authority" means a county council or a county borough council.".

(5) After regulation 2, insert—

"Meaning of "the Mining Waste Directive" in regulation 2

2A.—(1) In regulation 2(4)(a)(iii), "the Mining Waste Directive" means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs (2) to (4).

(2) Article 2 is to be read as if—

(a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with paragraph (4) of this regulation;

(b) paragraphs 3 and 4 were omitted.

(3) Article 3(1) is to be read as if, for "Article 1(a) of Directive 75/442/EC" there were substituted "Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive".

(4) For the purposes of paragraph (2)(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(a) the first reference to "Member States" were a reference to the Welsh Ministers or the Natural Resources Body for Wales;

(b) at the end, there were inserted—

"and "environmental objectives", in relation to a river basin district within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 has the same meaning as in those Regulations."."

(6) In regulation 7(10) (as amended by regulation 4(3)), at the end, insert "read in accordance with paragraph (11).

(7) After paragraph (10) insert—

"(11) For the purposes of regulation 7(10), the Directive is to be read as if—

(a) in Article 2—

(i) for point (a) there were substituted—

"(a) 'waste' has the meaning given by Article 3(1) of the Waste Framework Directive, as read with Article 5 and 6 of that Directive;";

(ii) for point (c) there were substituted—

"(c) 'hazardous waste' has the meaning given by Article 3(2) of the Waste Framework Directive. ".

(b) in Article 3(2), "Without prejudice to existing Community legislation," were omitted.".

The Hazardous Waste (Wales) Regulations 2005

8.—(1) The Hazardous Waste (Wales) Regulations 2005(**1**) are amended as follows.

(2) In regulation 2(1)—

(**1**) S.I. 2005/1806 (W.138).

(a) in sub-paragraph (a), at the end insert ", and read in accordance with regulation 2A";

(b) in sub-paragraph (b)(i), at the end insert ", as read with Articles 5 and 6 of that Directive".

(3) After regulation 2 insert—

"Meaning of the Waste Directive

2A.—(1) For the purposes of these Regulations, the Waste Directive is to be read in accordance with this regulation.

(2) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority or local authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of Wales.

(3) Article 2 is to be read as if—

(a) in paragraph 2—

(i) in the words before point (a), for "other Community legislation" there were substituted "retained EU law";

(ii) in points (b) and (c), for "Regulation (EC) No 1774/2002" there were substituted "Regulation (EC) No 1069/2009";

(iii) in point (d), for the words from "Directive 2006/21/EC" to the end there substituted "the Mining Waste Directive";

(b) in paragraph 3, the words from "Without prejudice" to "Community legislation," were omitted;

(c) paragraph 4 were omitted.

(4) Article 3(20) is to be read as if for "Article 2(11) of Directive 96/61/EC" there were substituted "Article 3(10) of the Industrial Emissions Directive".

(5) Article 5 is to be read as if paragraph 2 were omitted.

(6) Article 6 is to be read as if—

(a) paragraphs 1 to 3 were omitted;

(b) in paragraph 4—

(i) in the first sentence, for the words from "Where criteria" to "paragraphs 1 and 2" there were substituted "Except where waste ceases to be waste in accordance

with Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013";

(ii) the second sentence were omitted.

(7) Article 7 is to be read as if—

(a) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) in the third sentence, for "shall be binding" there were substituted "shall, subject to paragraph 1A, be binding";

(b) after paragraph 1, there were inserted—

"**1A.** Paragraph 1 is subject to—

(a) a determination by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as hazardous waste;

(b) a decision made by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as non-hazardous waste;

(c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulations 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;

(d) regulations (if any) made by the Welsh Ministers under section 62A(2) of the Environmental Protection Act 1990 (lists of waste displaying hazardous properties).";

(c) paragraphs 2, 3 and 5 were omitted;

(d) after paragraph 6 there were inserted—

"**6A.** In this Article, the "list of waste" means the list established by Commission Decision 2000/532/EC.";

(e) paragraph 7 were omitted.

(8) Article 19 is to be read as if—

(a) in paragraph 1, for "Community" there was substituted "national";

(b) in paragraph 2, for "a Member State" there were substituted "Wales".

(9) Annex 3 is to be read as if, in entry HP 9, in the second sentence, "in the Member States" were omitted.

(10) In paragraph (2) "local authority" means a county council or a county borough council.

Meaning of the "Mining Waste Directive" and "Industrial Emissions Directive"

2B.—(1) In regulation 2A(3)(a)(iii), "the Mining Waste Directive" means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs (2) and (3).

(2) Article 2 is to be read as if—

(a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with paragraph (7) of this regulation;

(b) paragraphs 3 and 4 were omitted**.**

(3) Article 3(1) is to be read as if, for "Article 1(a) of Directive 75/442/EEC" there were substituted "Article 3(1) of the Waste Directive, as read with Articles 5 and 6 of that Directive".

(4) In regulation 2A(4), "the Industrial Emissions Directive" means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)(**1**), read in accordance with paragraphs (5) and (6).

(5) Article 3 is to be read as if—

(a) in point (1)(a), for the words from "Article 1" to the end there were substituted "Article 4(78) of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation(**2**)";

(b) in point (10)(b), for "Member State in question" there were substituted "United Kingdom";

(c) in point (23), for the words from "point 1" to the end there were substituted

(**1**) OJ No L 334 , 17.12.2010, p 17, as corrected by a corrigendum (OJ No L 158, 19.6.2012, p 25).

(**2**) OJ L 13, 17.1.2014, p 1, as corrected by a corrigendum (OJ No L 072, 17.3.2016, p 69).

"point 1 of the second subparagraph of Article 2 of Council Directive 2009/158/EC on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs(**1**)";

(d) in point (37), for "Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste" there were substituted "the Waste Directive, as read with Articles 5 and 6 of that Directive".

(6) Annex 1 is to be read as if—

(a) in the words before point 1, the second paragraph were omitted;

(b) in point 5.3—

(i) in point (a), in the words before point (i), for "Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment" there were substituted "the Urban Waste Water Treatment (England and Wales) Regulations 1994(**2**)";

(ii) in point (b), in the words before point (i), for "Directive 91/271/EEC" there were substituted "the Urban Waste Water Treatment (England and Wales) Regulations 1994";

(c) in point 5.4, the reference to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste were a reference to the Landfill Directive;

(d) in point 6.9, for "Directive 2009/31/EC" there were substituted "the EU-derived domestic legislation which transposed Directive 2009/31/EC in respect of Wales";

(e) in point 6.11, for "Directive 91/271/EEC" there were substituted "the Urban Waste Water Treatment (England and Wales) Regulations 1994".

(7) For the purposes of paragraph (2)(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(**1**) OJ No L 343, 22.12.2009, p 74, as last amended by Commission Implementing Decision 2011/879/EU (OJ No L 343, 23.12.2011, p 105).

(**2**) S.I. 1994/2841.

(a) the first reference to "Member States" were a reference to the appropriate authority;

(b) at the end, there were inserted—

"and "environmental objectives", in relation to a river basin district within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, has the same meaning as in those Regulations".

(4) In regulation 5(1)—

(a) in the relevant place insert—

"appropriate authority" ("awdurdod priodol") means the Welsh Ministers, NRBW or the Agency;";

(b) after the definition of "hazardous waste" ("gwastraff peryglus") insert—

"the Landfill Directive" ("y Gyfarwyddeb Dirlenwi") means Council Directive 1999/31/EC on the landfill of waste(**1**), as last amended by Council Directive 2011/97/EU(**2**), and read as if—

(a) in Article 2—

(i) for point (a) there were substituted—

"(a) 'waste' has the meaning given by regulation 2(1)(b) of the Hazardous Waste (Wales) Regulations 2005;";

(ii) for point (c) there were substituted—

"(c) 'hazardous waste' has the meaning given in regulation 6 of the Hazardous Waste (Wales) Regulations 2005.";

(b) in Article 3(2), "Without prejudice to existing Community legislation," were omitted.".

(5) In regulation 8—

(a) in paragraph (2)—

(i) omit the words from "by the Secretary of State" to "may be,";

(ii) for "Article 7(2) of the Waste Directive" substitute "paragraph (3)";

(b) after paragraph (2) insert—

(**1**) OJ No L 182, 16.7.1999, p 1.
(**2**) OJ No L 328, 10.12.2011, p 49.

"(3) For the purposes of paragraph (2), a specific batch of waste is determined to be hazardous—

(a) in relation to England if—

(i) of a type listed in regulations made under section 62A(2) of the 1990 Act;

(ii) it is the subject of a determination by the Secretary of State under regulation 8 of the Hazardous Waste (England and Wales) Regulations 2005(**1**);

(b) in relation to Northern Ireland, it is the subject of a determination by the Department of Agriculture, Environment and Rural Affairs under regulation 9 of the Hazardous Waste Regulations (Northern Ireland) 2005(**2**);

(c) in relation to Scotland, it is the subject of a determination by the Scottish Ministers, because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex III.".

(6) In regulation 9—

(a) in paragraph (2)—

(i) omit the words from "by the Secretary of State" to "may be,";

(ii) for "Article 7(2) of the Waste Directive" substitute "paragraph (3)";

(b) after paragraph (2) insert—

"(3) For the purposes of paragraph (2), a specific batch of waste is determined to be non-hazardous if it is the subject of a decision—

(a) in relation to England, by the Secretary of State under regulation 9 of the Hazardous Waste (England and Wales) Regulations 2005;

(b) in relation to Northern Ireland, by the Department of Agriculture, Environment and Rural Affairs under regulation 10 of the Hazardous Waste Regulations (Northern Ireland) 2005;

(c) in relation to Scotland, by the Scottish Ministers that the Scottish Ministers consider that the waste displays none

(**1**) S.I. 2005/894, amended by S.I. 2011/988, 2015/1360, 2016/738, 2018/575.

(**2**) S.R. 2005 No. 300; relevant amending instruments are S.R 2011 No. 127 and S.R 2015 No. 288.

of the hazardous properties listed in Annex III.".

(7) In regulations 47(5B) and 48(6B) (as amended by regulation 5(2) and 5(3)), for "Council Directive 1999/31/EC on the landfill of waste as last amended by Council Directive 2011/97/EU" substitute "the Landfill Directive".

(8) In regulation 60(1), in the words before sub-paragraph (a), omit from "and" to "Directive".

The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011

9.—(1) The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011(**1**) are amended as follows.

(2) In regulation 2(1), in the definition of "the Waste Framework Directive" ("y Gyfarwyddeb Fframwaith Gwastraff") (as substituted by regulation 6), at the end, insert "and read in accordance with paragraphs (3) to (8)".

(3) After paragraph (2) insert—

"(3) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the Welsh Ministers, the Natural Resources Body for Wales or local authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of Wales.

(4) Article 2 is to be read as if—

(a) in paragraph 2—

(i) in the words before point (a), for "other Community legislation" there were substituted "retained EU law";

(ii) in points (b) and (c), for "Regulation (EC) No 1774/2002" there were substituted "Regulation (EC) No 1069/2009";

(iii) in point (d), for the words from "Directive 2006/21/EC" to the end there substituted "the Mining Waste Directive (see regulation 2A)";

(**1**) S.I. 2011/1014 (W.152), amended by S.I.2016/691 (W.189); there are other amending instruments but none is relevant.

(b) in paragraph 3, the words from "Without prejudice" to "Community legislation," were omitted;

(c) paragraph 4 were omitted.(5) Article 5 is to be read as if paragraph 2 were omitted.

(6) Article 6 is to be read as if—

(a) paragraphs 1 to 3 were omitted;

(b) in paragraph 4—

(i) in the first sentence, for the words from "Where criteria" to "paragraphs 1 and 2" there were substituted "Except where waste ceases to be waste in accordance with Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013";

(ii) the second sentence were omitted.

(7) Article 7 is to be read as if—

(a) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) in the third sentence, for "shall be binding" there were substituted "shall, subject to paragraph 1A, be binding";

(b) after paragraph 1, there were inserted—

"**1A.** Paragraph 1 is subject to—

(a) a determination by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as hazardous waste;

(b) a decision made by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as non-hazardous waste;

(c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulations 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;

(d) regulations (if any) made by the Welsh Ministers under section 62A(2) of the Environmental Protection Act 1990 (lists of

waste displaying hazardous properties).";

(c) paragraphs 2, 3 and 5 were omitted;

(d) after paragraph 6 there were inserted—

"**6A.** In this Article, the "list of waste" means the list established by Commission Decision 2000/532/EC.";

(e) paragraph 7 were omitted.

(8) Annex 3 is to be read as if, in entry HP 9, in the second sentence, "in the Member States" were omitted."

(4) After regulation 2, insert—

"Meaning of "the Mining Waste Directive" in regulation 2

2A.—(1) In regulation 2(4)(a)(iii), "the Mining Waste Directive" means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with subsections (2) to (4).

(2) Article 2 is to be read as if—

(a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with subsection (4);

(b) paragraphs 3 and 4 were omitted.

(3) Article 3(1) is to be read as if, for "Article 1(a) of Directive 75/442/EC" there were substituted "Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive".

(4) For the purposes of paragraph (2)(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(a) the first reference to "Member States" were a reference to the Welsh Ministers or the Natural Resources Body for Wales;

(b) at the end, there were inserted—

"and "environmental objectives", in relation to a river basin district within the meaning of the Water Environment

(Water Framework Directive) (England and Wales) Regulations 2017 has the same meaning as in those Regulations.".

Hannah Blythyn
Deputy Minister for Housing and Local Government, under authority of the Minister for Housing and Local Government, one of the Welsh Ministers
28 February 2019

Explanatory Memorandum to The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Hannah Blythyn
Deputy Minister for Housing and Local Government
1 March 2019

PART 1

1. Description

This instrument makes amendments using powers under the European Union (Withdrawal) Act 2018 (except part 2 – see below) to the following legislation:

- The Waste (Wales) Measure 2010
- The Landfill Allowance Scheme (Wales) Regulations 2004
- The Hazardous Waste (Wales) Regulations 2005
- The Recycling Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011

The amendments are to ensure that the statute book remains functional following the UK's exit from the EU and will address deficiencies in Welsh domestic legislation arising from EU Exit.

Part 2 of the Instrument is made under section 2(2) of the European Communities Act 1972 and corrects out of date references to European law and domestic legislation prior to, and in readiness for the UK's exit from the EU. This is required because out of date references to legislation are not necessarily interpreted as references to the correct (updated) legislation and there is therefore a risk that the statute book would not work effectively and inaccessible post-Brexit.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument (with the exception of Part 2) is being made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (hereafter "the Withdrawal Act").

As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to the negative procedure. Such instruments must first be laid for sifting by the Constitutional and Legislative Affairs Committee. The instrument makes minor and technical changes and as such should be subject to annulment.

The CLA Committee considered a draft of these regulations on 18 February 2019, and agreed that the negative procedure is appropriate for these regulations. A copy of the published CLA report can be accessed via the following link: http://www.assembly.wales/laid%20documents/cr-ld12192/cr-ld12192-e.pdf

3. Legislative background

This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 to the Withdrawal Act in order to address failures of retained EU

law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations are proposed to be made subject to annulment and laid for the purpose of being sifted by the Constitutional and Legislative Affairs Committee (proposed negative).

4. Purpose and intended effect of the legislation

What did any relevant retained EU law do before exit day?
The instrument amends four pieces of Welsh legislation relating to waste which implement various European Directives related to waste management to ensure that the waste regime can continue to operate effectively after the UK leaves the EU. No environmental standards are being removed or amended. Modifications are necessary to the text of the domestic legislation, removing or amending references to EU Directives and associated EU terms to ensure that waste legislation continues to operate as intended after EU exit.

EU law lays down rules and frameworks for the management of waste. These are implemented in Wales primarily via domestic legislation. The instrument amends that domestic legislation under powers in the Withdrawal Act (except Part 2 see section on 'out of date references below) to make the necessary technical changes to ensure that it will continue to operate effectively after the UK has left the EU, as set out below.

<u>The Waste (Wales) Measure 2010 ("the 2010 Measure")</u>

The 2010 Measure makes provision, amongst other things:
- about targets to be met by local authorities in relation to waste;
- about prohibiting or otherwise regulating the deposit of waste in a landfill;
- to provide for site waste management plans for works involving construction or demolition.

The 2010 Measure borrows various definitions by reference to the Waste Framework Directive (Directive 2008/98/EC), the Industrial Emissions Directive (Directive 2010/75/EU) and the Landfill Directive (Directive 1999/31/EC). These references need to be modified to ensure the 2010 Measure remains operable post EU Exit.

<u>The Landfill Allowances Scheme (Wales) Regulations 2004 ("the 2004 Regulations")</u>

The Waste and Emissions Trading Act 2003 aims to significantly reduce the quantity of biodegradable municipal waste sent to landfills, as required by Article 5 of the Landfill Directive. The Act sets the framework for the creation of a landfill allowance scheme and obliges the Assembly to allocate allowances to waste disposal authorities in Wales, not exceeding the maximum specified in relation to Wales.

The 2004 Regulations supplement the Waste and Emissions Trading Act 2003, by making detailed provision for the monitoring and enforcement of the land-fill allowances allocated to waste disposal authorities in Wales under the Act. The 2004 Regulations refer to various defined terms by reference to various waste related directives. Therefore these references need to be modified, similar to that in the 2010 Measure, to ensure the Regulations remain operable post EU Exit.

The Hazardous Waste (Wales) Regulations 2005 ("the 2005 Regulations")

The 2005 Regulations set out the regime for the control and tracking of hazardous waste in Wales, identical regulations are in force in England. The 2005 Regulations introduced a process for registration of hazardous waste producers and a system for recording the movement of waste from the point of production to the final point of disposal or recovery. The 2005 Regulations likewise refer to, and borrow defined terms such as waste, hazardous waste properties, recovery and disposal of waste by reference to the Waste Framework Directive and the Landfill Directive. Therefore, the 2005 Regulations need to be amended to ensure they remain operable post EU exit.

The Recycling, Preparation for Reuse and Composting Targets (Monitoring and Penalties (Wales) Regulations 2011 (the "2011 Regulations")

Section 3 of the 2010 Measure establishes statutory targets for the percentage of a local authority's municipal waste which must be recycled, prepared for re-use and composted and impose a financial liability on a local authority if it fails to meet a target. The 2011 Regulations supplement the 2010 Measure, by making detailed provision for the monitoring and enforcement of the targets. The 2011 Regulations refer to various provisions of the Waste Framework Directive which need to be amended to ensure they remain operable after EU exit.

Out of date references

In addition to the modifications described above, the 2019 Regulations correct out of date references to European Directives and Regulations in domestic legislation, using powers under section 2(2) of the European Communities Act 1972. The 2019 Regulations update references in the four pieces of domestic legislation set out above so that they refer to the correct version of the Waste related directives. This is consistent with other updates that have been made and to ensure the statute book works effectively post EU Exit.

Why is it being changed?

Directives are not being incorporated into domestic law under the Withdrawal Act and will not form part of retained EU law. Therefore, the 2019 Regulations make provision so that the domestic legislation that cross-refer to the various directives are amended (e.g. the directives are modified, where necessary, for the purpose of that legislation) to ensure that it continues to operate as

intended after EU Exit. The minor and technical changes made by the instrument are necessary to ensure that the legislation it amends continues to operate effectively following the UK's withdrawal from the European Union.

What will it now do?
The instrument will ensure that the legislation being amended continues to operate effectively after the UK leaves the EU. There is no change in environmental standards.

5. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain operable after the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

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Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Deputy Minister for Housing and Local Government, Hannah Blythyn has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because the changes being made are technical in nature and make no substantive changes to waste law in Wales."

2. Appropriateness statement

The Deputy Minister for Housing and Local Government, Hannah Blythyn has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 does no more than is appropriate". This is the case because the instrument makes technical amendments only which are designed to address failures of retained EU law to operate effectively after exit day."

3. Good reasons

The Deputy Minister for Housing and Local Government, Hannah Blythyn has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is because the provisions ensure that protections provided by the Welsh legislation being amended continue to be operable after the UK leaves the European Union."

4. Equalities

4.1 The Deputy Minister for Housing and Local Government, Hannah Blythyn has made the following statement(s)

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

4.2 The Deputy Minister for Housing and Local Government, Hannah Blythyn has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Hannah Blythyn have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

Agenda Item 4.14

SL(5)372 – The National Health Service (Clinical Negligence Scheme) (Wales) Regulations 2019

Background and Purpose

The Regulations establish the Clinical Negligence Scheme for NHS Trusts and Local Health Boards to provide for all qualifying liabilities, from 1 April 2019, in tort and in contract.

The indemnity provided under the Scheme covers the clinical negligence liabilities of members (Local Health Boards and NHS Trusts) as well as those of non-member contractors who provide primary medical services by virtue of an arrangement with a member of the Scheme (e.g. a general medical services contract).

The Scheme applies from 1 April 2019 in respect of all liabilities within its scope. This means that, from that date, members and contractors will automatically be covered by the Scheme in relation to such liabilities.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

These Regulations introduce a state-backed scheme to provide clinical negligence indemnity for providers of GP services. The scheme will cover all contracted GPs and other health professionals working in NHS general practice.

The Explanatory Memorandum to these Regulations states, at paragraph 6:

> "A Regulatory Impact Assessment has not been prepared for this instrument as it imposes no costs or no savings, or negligible costs or savings on the public, private or charities and voluntary sectors."

Given the significance of these Regulations, we would welcome clarification from the Welsh Government as to why no Regulatory Impact Assessment was carried out (and upon which exemption in the "Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation" is the Welsh Government relying to not carry out a Regulatory Impact Assessment).

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required to the merits point raised in this report.

Legal Advisers
Constitutional and Legislative Affairs Committee
12 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 422 (W. 97)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Clinical Negligence Scheme) (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Wales, make provision in connection with the Clinical Negligence Scheme for NHS Trusts and Local Health Boards in Wales ("the Scheme"). The Scheme enables members exercising functions in connection with the National Health Service in Wales to make provision for meeting liabilities to which the Scheme applies. These Regulations revoke and replace the National Health Service (Clinical Negligence Scheme) Regulations 1996 (S.I. 1996/251).

Regulation 3 sets out the Scheme's purpose and provides that it will be administered by the Welsh Ministers. Regulation 4 lists the bodies eligible to become members and regulation 5 sets out the procedure for eligible bodies to become a member. Membership may be cancelled under regulation 6 by any member of at least 3 years standing. The Welsh Ministers may also cancel a body's membership in accordance with regulation 7 on grounds which include non-payment of a member's contribution to the Scheme.

Regulations 8 and 9 set out the liabilities to which the Scheme applies. Regulation 8 provides that the Scheme applies to contractual liabilities and liabilities in tort which a member owes to a third party in connection with personal injury or loss arising from negligent acts or omissions in the exercise of specified health service functions of the member. In the circumstances set out in regulation 9, the Scheme also applies to liabilities in negligence which a non-member owes to third parties and for which members of the Scheme are treated as liable. Regulation 9 provides that the member of the Scheme is to be

treated as liable in respect of negligence liabilities that arose whilst relevant health services were being provided by non-members under an arrangement with a member of a Scheme.

Regulations 10 to 12 contain provision for the calculation (and in certain circumstances the revision) of amounts which members are required to contribute for the purposes of the Scheme and sets out when such contributions must be made.

Regulations 13 to 18 set out the circumstances in which payments are to be made by the Welsh Ministers under the Scheme to or on behalf of members. Regulation 13 deals with payments in respect of the liabilities of members, regulation 14 deals with payments in respect of the liabilities of former members in respect of events occurring during membership and regulation 15 specifies circumstances in which any such liabilities are excluded. Regulation 16 applies regulations 13 to 15 with modifications to the cases where specified members of the Scheme are treated as liable in respect of the negligence liabilities of others (as set out in regulation 9). Amounts to be paid are determined in accordance with regulation 17 and provision for the making of payments on account is contained in regulation 18.

Regulation 19 sets out the requirements for members to provide information to the Welsh Ministers for the purposes of the Scheme. Regulation 20 requires the Welsh Ministers to make available to eligible bodies any directions or guidance which the Welsh Ministers give to any body directed to administer the Scheme on behalf of the Welsh Ministers. Regulation 21 makes consequential amendments to the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 (S.I. 2004/478 (W. 48)). Regulation 22 revokes the National Health Service (Clinical Negligence Scheme) Regulations 1996.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a Regulatory Impact Assessment for this instrument as no impact on the private or voluntary sectors is foreseen.

WELSH STATUTORY INSTRUMENTS

2019 No. 422 (W. 97)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Clinical Negligence Scheme) (Wales) Regulations 2019

Made *4 March 2019*

Laid before the National Assembly for Wales *5 March 2019*

Coming into force *1 April 2019*

The Welsh Minsters make the following Regulations in exercise of the powers conferred by sections 30, 47(1) and (2), and 203(9) and (10) of the National Health Service (Wales) Act 2006(**1**).

Title, commencement and application

1.—(1) The title of these Regulations is the National Health Service (Clinical Negligence Scheme) (Wales) Regulations 2019.

(2) These Regulations come into force on 1 April 2019.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

"the Act" ("*y Ddeddf*") means the National Health Service (Wales) Act 2006;

"eligible body" ("*corff cymwys*") means a body specified in regulation 4;

(**1**) 2006 c. 42. Section 30 was amended by section 166 of, and paragraph 1 of Schedule 15(1) to, the Health and Social Care Act 2008 (c. 14); and by section 306(4) of, and paragraph 22 of Schedule 7 to, the Health and Social Care Act 2012 (c. 7).

"Local Health Board" ("*Bwrdd Iechyd Lleol*") means a Local Health Board established in accordance with section 11(2) of the Act;

"member" ("*aelod*") means an eligible body which is a member of the Scheme;

"membership year" ("*blwyddyn aelodaeth*") means, in respect of any eligible body, any 12 month period starting on 1 April during which the body is a member of the Scheme;

"NHS Trust" ("*Ymddiriedolaeth GIG*") means a National Health Service Trust established in accordance with section 18(2) of the Act;

"primary medical services" ("*gwasanaethau meddygol sylfaenol*") means health services provided under a contract, arrangement or agreement made under or by virtue of the following sections of the Act—

(a) section 41(2) (primary medical services);

(b) section 42(1) (general medical services contracts);

(c) section 50 (arrangements by Local Health Boards for the provision of primary medical services);

"primary medical services provider" ("*darparwr gwasanaethau meddygol sylfaenol*") means the person who has entered into a contract to provide primary medical services in accordance with section 41(2)(b), 42 or 50 of the Act:

"relevant function" ("*swyddogaeth berthnasol*") means—

(a) arranging for the provision of services for the purposes of the health service(**1**);

(b) providing services for the purposes of the health service;

(c) exercising functions in relation to the health service;

(d) providing primary medical services;

(e) exercising powers under, or by virtue of, section 7 of the Health and Medicines Act 1988(**2**);

(f) exercising powers under section 169 of, or paragraphs 19 and 20 of Schedule 3 to, the Act;

(**1**) "The health service" is defined in section 206(1) of the National Health Service (Wales) Act 2006.

(**2**) The functions of the Secretary of State were transferred to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are exercisable, in relation to Wales, by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

"relevant health services" ("*gwasanaethau iechyd perthnasol*") means primary medical services provided in Wales for the purposes of the health service;

"the Scheme" ("*y Cynllun*") means the Clinical Negligence Scheme for NHS Trusts and Local Health Boards established by regulation 3.

Clinical Negligence Scheme for NHS Trusts and Local Health Boards

3.—(1) There is hereby established a scheme, to be known as the Clinical Negligence Scheme for NHS Trusts and Local Health Boards.

(2) The purpose of the Scheme is to enable an eligible body to make provision to meet liabilities to which the Scheme applies.

(3) An eligible body may participate in the Scheme only if it is a member of the Scheme.

(4) The Scheme is to be administered by the Welsh Ministers.

Eligible bodies

4. The bodies which are eligible to be a member of the Scheme are—

(a) a NHS Trust, or

(b) a Local Health Board.

Membership of the Scheme

5.—(1) An eligible body may apply to the Welsh Ministers to become a member of the Scheme.

(2) An application made in accordance with paragraph (1) must—

(a) be made in writing,

(b) be made in such form and be submitted in such manner as the Welsh Ministers may require,

(c) specify a date on which the eligible body proposes that its membership should start, and

(d) contain, or be accompanied by, such information as the Welsh Ministers may require.

(3) At any time after receiving an application and before determining it, the Welsh Ministers may in writing require the applicant to provide such further information as the Welsh Ministers consider necessary for the purposes of determining the application.

(4) Information that may be required in accordance with paragraphs (2) and (3) includes—

(a) the nature of the applicant's functions;

(b) the number of employees and contractors;

(c) qualifications and experience of such employees and contractors;

(d) details of any previous claims in which the applicant has been the defendant in respect of personal injury claims made as a result of the exercise of any relevant function;

(e) such other information as the Welsh Ministers may request for the purposes of determining the application.

(5) The Welsh Ministers must—

(a) within 6 weeks of receiving an application made in accordance with the requirements in paragraphs (2) and (3), determine whether or not to grant it, and

(b) as soon as reasonably practicable, inform the applicant of the determination by a notice in writing which, if the application is granted, must specify the date on which the applicant's membership is to start.

(6) In determining whether to grant an application, the Welsh Ministers must have regard to—

(a) the information provided by the applicant, and

(b) such other factors as the Welsh Ministers consider relevant.

(7) Where an eligible body's application is granted, that body's membership of the Scheme starts on the date specified in the notice given in accordance with paragraph (5)(b).

(8) For the purposes of paragraph (4)(b) and (c), reference to "contractors" is to be construed in accordance with regulation 9(2).

Cancellation of membership by a member

6.—(1) This regulation applies only in relation to any member which has been a member of the Scheme for at least 3 consecutive membership years.

(2) A member of the Scheme may cancel its membership of the Scheme by giving notice of the cancellation in writing to the Welsh Ministers.

(3) Where a notice under paragraph (2)—

(a) is given before 1 September in a membership year, the notice takes effect at the end of that membership year;

(b) is given on or after 1 September in a membership year, the notice takes effect at the end of the following membership year.

Cancellation of membership by the Welsh Ministers

7.—(1) The Welsh Ministers may cancel a member's membership of the Scheme in any of the circumstances specified in paragraphs (2) to (4).

(2) The circumstances specified in this paragraph are where the member is liable to make a payment to the Welsh Ministers under regulation 11 (duty of members to make contributions to the Scheme) and that payment remains unpaid for a period of 28 days or more which starts with the date on which the payment became due.

(3) The circumstances specified in this paragraph are where the member has failed to provide any information required under regulation 19 (duty of members to provide information)—

(a) before the end of the period of 28 days which starts with the date on which the Welsh Ministers request the information, or

(b) if the Welsh Ministers in writing allow a further period for providing such information, before the end of that further period.

(4) The circumstances specified in this paragraph are where the Welsh Ministers consider that it would be detrimental to the efficient administration of the Scheme or the interests of other members for the member to remain a member of the Scheme.

(5) The Welsh Ministers must inform the member by notice in writing that its membership of the Scheme is to cease with effect from a date specified in the notice and—

(a) where the cancellation is in circumstances specified in paragraph (2), (3), or (4)—

(i) the date to be specified must not be less than 28 days after the date on which the notice is given, but

(ii) the Welsh Ministers may determine not to cancel the membership by giving the member a further notice in writing to that effect.

Liabilities of members

8.—(1) The Scheme applies to—

(a) any liability in tort under the law of England and Wales which a member of the Scheme owes to a third party in respect of or consequent upon personal injury or loss specified in paragraph (2), and

(b) any contractual liability of a member of the Scheme—

(i) arising as a consequence of an arrangement to provide relevant health

services referred to in regulation 9(2), and

(ii) specified as a qualifying liability of a contractor in regulation 9(4).

(2) The personal injury or loss referred to in paragraph (1) is personal injury or loss arising out of or in connection with any breach of a duty of care, which—

(a) the member owes to any person in connection with the diagnosis of any illness or the care or treatment of any patient, and

(b) is in consequence of any act or omission specified in paragraph (3).

(3) The act or omission referred to in paragraph (2) is an act or omission to act on the part of—

(a) a person employed or engaged by the member in connection with any relevant function provided by the member, or

(b) an employee or agent of a person engaged by the member in connection with the provision of any relevant function.

Other liabilities for which members are treated as liable

9.—(1) In this regulation, "health services provider" means an NHS Trust, Local Health Board or a primary medical services provider.

(2) The Scheme applies to the qualifying liabilities of a health services provider which is not a member of the Scheme ("the contractor") where its provision of relevant health services is the subject of an arrangement between it and another health services provider which is a member of the Scheme.

(3) Qualifying liabilities to which the Scheme applies under paragraph (2) are to be treated for the purposes of the Scheme and these Regulations as if they were liabilities of the health services provider who is a member of the Scheme and which entered into the arrangement.

(4) Qualifying liabilities of a contractor are any liability in tort under the law of England and Wales which—

(a) the contractor owes to a third party in respect of or consequent upon personal injury or loss as specified in paragraph (5), and

(b) is in consequence of the arrangement referred to in paragraph (2).

(5) The personal injury or loss referred to in paragraph (4)(a) is personal injury or loss arising out of or in connection with any breach of a duty of care which—

(a) the contractor owes to any person in connection with the diagnosis of any illness or the care or treatment of any patient, and

(b) is in consequence of any act or omission specified in paragraph (6).

(6) The act or omission referred to in paragraph (5)(b) is an act or omission to act in connection with the provision of relevant health services on the part of—

(a) the contractor,

(b) a person employed or engaged by the contractor, or

(c) an employee or agent of a person engaged by the contractor.

Determination of amounts payable by members

10.—(1) The Welsh Ministers must determine the amount which each member of the Scheme must pay to the Welsh Ministers in respect of each membership year.

(2) In determining the amount in paragraph (1) in respect of any member ("M"), the Welsh Ministers may have regard to—

(a) the Welsh Ministers' estimate of the total amount which, by virtue of regulation 13 (payments out of the Scheme), is likely to be payable during that membership year in respect of all liabilities to which the Scheme applies;

(b) the nature of M's relevant functions;

(c) the number of M's employees and contractors who are engaged in M's performance of a relevant function or any part of a relevant function;

(d) the qualifications and experience of those employees and contractors;

(e) any agreement in respect of M which falls within regulation 13(3)(c) (agreement that the Scheme is to cover a future claim in respect of liability incurred before membership starts);

(f) any agreement in respect of M which falls within regulation 13(5)(c) (agreement that the Scheme is to cover existing claim not met before membership ceases);

(g) any agreement in respect of M which falls within regulation 14(2)(a) (agreement on payment of additional contribution that the Scheme is to cover a claim in respect of liability incurred before membership ceases);

(h) the Welsh Ministers' assessment of—

(i) the likely effectiveness of any steps being taken, or to be taken, by M as to the manner in which M exercises any relevant function for the purpose of reducing the incidence of liabilities in connection with those functions to which the Scheme applies, and

(ii) the effectiveness of any steps which have already been taken for that purpose;

(i) any other factor relating to M or any other member of the Scheme which the Welsh Ministers consider relevant to the determination under paragraph (1).

(3) In respect of each membership year, the Welsh Ministers must give each member notice in writing specifying the amount determined in respect of that member in accordance with paragraph (1).

(4) Except as stated in paragraph (5), a notice given in accordance with paragraph (3) must be given no later than 31 December in the membership year before that to which the notice relates.

(5) In the case of any member admitted to the Scheme—

(a) the notice in respect of the first membership year must be given no later than 6 months after the date on which the Welsh Ministers receive the member's application in accordance with regulation 5 (membership of the Scheme), and

(b) the notice in respect of the second membership year must be given no later than 1 July in that membership year.

(6) For the purposes of paragraph (2)(c) and (d), reference to "contractors" is to be construed in accordance with regulation 9(2).

(7) For the purposes of paragraph (5), reference to the "the first membership year" of a body which is a member of the Scheme is to the whole or part of any membership year immediately following any period during which the body was not a member.

Duty of members to make contributions to the Scheme

11.—(1) Each member of the Scheme must, in respect of each membership year, pay to the Welsh Ministers the amount determined in respect of the member under regulation 10(1) (determination of amounts payable by members).

(2) Except as stated in paragraph (3), a member which receives a notice under regulation 10(3) of the amount payable in respect of a membership year must pay the amount due—

(a) in accordance with such arrangement as may be agreed by the Welsh Ministers and the member (which may include payment in instalments to be made at agreed times);

(b) if no agreement is reached by 1 March immediately before the start of the membership year, by such time and in such manner as the Welsh Ministers may decide.

(3) Where a member admitted to the Scheme receives a notice under regulation 10(3) in respect of a membership year, the member must pay—

(a) the amount due in respect of the first membership year no later than 8 months after the date on which the Welsh Ministers receive the member's application under regulation 5 (membership of the Scheme), and

(b) the amount due in respect of the second membership year no later than 1 August in that membership year.

(4) For the purposes of paragraph (3), reference to "the first membership year" of a body which is a member of the Scheme is to be construed in accordance with regulation 10(7).

Revision of determination of payable amount

12.—(1) Paragraph (2) applies where the Welsh Ministers identify before the end of a membership year that the amount determined by them in accordance with regulation 10(1) as being payable by the member in respect of that year—

(a) is incorrectly calculated,

(b) is determined by reference to information which was incorrect, or

(c) should be reconsidered in light of further information that has become available to the Welsh Ministers.

(2) The Welsh Ministers—

(a) must reconsider the amount determined, and

(b) at any time before the end of the membership year in question, may revise the amount payable by the member in respect of that year.

(3) The Welsh Ministers must give the member notice in writing of any revised amount determined in accordance with paragraph (2)(b) and the member must pay any amount that remains due in respect of the membership year—

(a) in accordance with such arrangements as may be agreed between the Welsh Ministers and the member (which may include

payment in instalments to be made at agreed times), and

(b) if no agreement is reached by the end of the membership year, by such time and in such manner as the Welsh Ministers may decide.

(4) The reference in paragraph (1) to an amount determined by the Welsh Ministers in accordance with regulation 10(1) includes any revised amount determined in accordance with paragraph (2)(b).

Payments out of the Scheme: liabilities of members

13.—(1) Where a payment falls to be made by a member of the Scheme in connection with a claim in respect of a liability to which the Scheme applies, the Welsh Ministers may pay to the member, or on the member's behalf, an amount determined in accordance with regulation 17.

(2) No payment may be made under paragraph (1)—

(a) in respect of any liability of the member which is excluded from the Scheme by any of paragraphs (3) to (5), or

(b) in respect of any liability of, or payment by, the member which is excluded from the Scheme by regulation 15 (exclusions).

(3) Any liability which was incurred by an eligible body before it became a member of the Scheme is excluded from the Scheme unless—

(a) the claim against the eligible body in respect of the liability was made after the start of its membership of the Scheme,

(b) the Welsh Ministers are satisfied that the eligible body informed the Welsh Ministers before the end of the qualifying period that the claim had been made,

(c) the Welsh Ministers agreed before the start of the eligible body's membership that any liability of the body that results from a claim to which sub-paragraphs (a) and (b) apply should not be excluded from the Scheme, and

(d) that agreement remained in force on the date on which the claim against the eligible body falls to be met.

(4) Any liability of a member which falls to be met after the member gives notice of cancellation under regulation 6(2) (cancellation of membership by a member) but before membership has ceased is excluded from the Scheme unless the Welsh Ministers are satisfied that the liability would have fallen to be met at that time irrespective of the member's decision to give such a notice.

(5) Any liability of an eligible body which falls to be met after its membership of the Scheme has ceased is excluded from the Scheme unless—

(a) the claim against the eligible body in respect of the liability was made before the body's membership ceased,

(b) the Welsh Ministers are satisfied that the eligible body informed the Welsh Ministers before the end of the qualifying period that the claim had been made,

(c) the Welsh Ministers agreed before the eligible body's membership ceased that any liability of the body that results from a claim to which sub-paragraphs (a) and (b) apply should not be excluded from the Scheme, and

(d) that agreement remained in force on the date on which the eligible body's membership ceased.

(6) In paragraphs (3)(b) and (5)(b), the "qualifying period" is the period of 14 days starting with the date on which the member became aware that a claim had been made or, if earlier, the date on which the Welsh Ministers consider that the member ought to have become aware that a claim had been made.

Payments out of the Scheme: liabilities of former members

14.—(1) Where—

(a) a payment falls to be made by an eligible body ("B") which has at any time been a member of the Scheme in connection with a claim in respect of a liability to which the Scheme applies, and

(b) the claim relates to a breach of the duty of care by B whilst it was a member of the Scheme,

the Welsh Ministers may, if the conditions specified in paragraph (2) are met, pay to B or on B's behalf an amount determined by the Welsh Ministers in accordance with regulation 17.

(2) The conditions are that—

(a) before B's membership of the Scheme ceases, the Welsh Ministers agree with B that, in respect of the membership year immediately preceding the cessation of B's membership, the amount to be paid by B under regulation 11 (duty of members to make contributions to the Scheme) is also to include an additional amount determined for the purposes of this regulation,

(b) that amount is determined by the Welsh Ministers as being sufficient to meet any

liabilities of B falling within paragraph (1) which were incurred whilst B was a member but fall to be met after the date on which B's membership ceases, and

(c) before that date, B either pays the additional amount in full or enters into an agreement with the Welsh Ministers to pay it in instalments.

(3) No payment may be made under paragraph (1) in respect of any liability of, or payment by, B which is excluded from the Scheme by regulation 15 (exclusions).

Exclusions

15.—(1) Except to such extent as the Welsh Ministers may determine, the following are excluded from the Scheme—

(a) any liability admitted by a member without first obtaining the Welsh Ministers' consent in writing;

(b) any liability determined by a Court in proceedings which are conducted by a member otherwise than in consultation with the Welsh Ministers;

(c) any payment falling to be made by a member where the member has not complied with any condition imposed by the Welsh Ministers relating to a claim;

(d) any payment falling to be made by a member where, without first obtaining the Welsh Ministers' consent in writing, the member agrees—

(i) to be bound by the determination of any person or body as to the making of a payment by that member in respect of a liability, or

(ii) to make any other payment in respect of the liability otherwise than in the course of legal proceedings or in consequence of a settlement of legal proceedings agreed to by the member;

(e) any liability that is of an amount less than the amount which is for the time being agreed between a member and the Welsh Ministers as being the minimum amount of any liability in respect of which a payment is to be made under the Scheme;

(f) any liability of a primary medical services provider which was either incurred, or falls to be met, in a membership year in relation to which that primary medical services provider was included in a notification to the Welsh Ministers by the Local Health Board.

(2) In paragraph (1)—

(a) references to "member" include a former member of the Scheme—

(i) in respect of which the requirements of regulation 13(5)(c) and (d) are met (agreement that the Scheme is to cover existing claim not met before membership ceases), or

(ii) to which regulation 14 applies (liabilities of former members);

(b) in sub-paragraph (f), "notification" means a list of primary medical services providers whose qualifying liabilities are not to be covered by the Scheme for the membership year.

Payments out of the Scheme: liabilities for which members are treated as liable

16.—(1) Paragraph (2) applies to any payment in connection with a claim in respect of a qualifying liability falling within regulation 9 (other liabilities for which members are treated as liable) where the payment falls to be made by a member of the Scheme which under regulation 9(3) is treated as being liable in respect of the claim.

(2) Regulations 13 to 15 (circumstances in which payments are to be made out of the Scheme in respect of liabilities of members and former members) are to apply to enable payments to be made to or on behalf of any member of the Scheme in respect of qualifying liabilities as those regulations apply in respect of the member's own liabilities.

(3) In the application of regulation 13, 14 or 15 for the purposes of paragraph (2), references to anything being done by, to or against a member in respect of a liability to which the Scheme applies includes references to it being done in respect of a qualifying liability for which the member is treated as being liable.

Determining the amount of any payment to be made out of the Scheme

17.—(1) In respect of each liability to which the Scheme applies, the Welsh Ministers must determine the amount of any payment which is to be made under regulation 13 or 14 (payments out of the Scheme in respect of liabilities of members and former members).

(2) In determining the amount of the payment to be made in circumstances specified in each of paragraphs (3) to (8), the Welsh Ministers must have regard to the relevant matters specified in that paragraph.

(3) Where an award of damages has been made by a Court against a member, the relevant matters are the amount of—

(a) the award,

(b) the legal and associated costs awarded to the claimant, and

(c) any legal and associated costs incurred by or on behalf of the member.

(4) Where legal proceedings are the subject of a settlement agreed to by the member, the relevant matters are the amount of—

(a) any sum paid or payable by the member in relation to the claimant's claim for damages,

(b) the member's contribution towards any legal and associated costs incurred by the claimant, and

(c) any legal and associated costs incurred by or on behalf of the member.

(5) Where, in any legal proceedings, a Court has declined to award damages against the member, the relevant matters are—

(a) the amount of any legal and associated costs incurred by or on behalf of the member, and

(b) the extent to which those costs are not recoverable either from the claimant or from the Legal Aid Agency under regulations made by virtue of section 26(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**1**) (costs in civil proceedings).

(6) Where a member has, otherwise than in the course of legal proceedings, agreed to make a payment in settlement of a claim, the relevant matters are the amount of—

(a) the payment agreed, and

(b) any legal or associated costs incurred by or on behalf of the member in connection with the claim.

(7) Where, otherwise than in the course of legal proceedings, a member has agreed to make any contribution towards legal or associated costs incurred by a person in connection with that person's claim against the member in respect of a liability to which the Scheme applies, the relevant matters are the amount of—

(a) that contribution, and

(b) any legal or associated costs incurred by or on behalf of the member in connection with the claim.

(**1**) 2012 c. 10.

(8) Where a member has agreed to be bound by the determination of any person or body as to the making of a payment by that member in respect of a liability to which the Scheme applies, the relevant matters are the amount of—

(a) the payment,

(b) any legal or associated costs incurred by the claimant in connection with the claim, and

(c) any legal or associated costs incurred by or on behalf of the member in connection with the claim.

(9) In this regulation, references to "member" are to be construed in accordance with regulation 15(2).

Power to make payments on account

18.—(1) Where, in any membership year, a payment falls to be made by a member in connection with a claim in respect of which an amount may become payable by the Welsh Ministers under regulation 17 (determining the amount of any payment to be made out of the Scheme), the Welsh Ministers may make a payment on account of any amount which may become payable.

(2) A payment on account may be made to or on behalf of the member.

(3) Where the amount of any payment on account exceeds the amount subsequently determined under regulation 17 as being the amount of payment to be made in connection with the claim, the excess is recoverable from the member.

Duty of members to provide information

19.—(1) In this regulation, "specified" means specified by the Welsh Ministers in a notice under paragraph (2).

(2) The Welsh Ministers may by notice in writing require a member to provide the Welsh Ministers with specified information.

(3) Specified information includes—

(a) the nature of any relevant function carried on, or to be carried on, by the member in a specified membership year,

(b) the number of the member's employees and contractors who are engaged in the member's performance of a specified relevant function or in a specified part of any such function,

(c) the qualifications and experience of those employees and contractors, and

(d) any event of which the member is aware which it considers might give rise to a liability to which the Scheme applies.

(4) The member must comply with a notice under paragraph (2) and must—

(a) provide the information within 28 days of receiving the notice or within such further period as the Welsh Ministers may in writing allow,

(b) provide the information in any specified form, and

(c) submit the information in any specified manner.

(5) For the purposes of paragraph (3)(b) and (c), reference to "contractors" is to be construed in accordance with regulation 9(2).

Directions and guidance

20.—(1) The Welsh Ministers must make the following information available to eligible bodies in such form and at such times as the Welsh Ministers consider appropriate(**1**)—

(a) any directions which the Welsh Ministers give to a relevant body with respect to the exercise by that body of its functions in connection with administering the Scheme, and

(b) any guidance which the Welsh Ministers give to a relevant body as to the manner in which the Scheme is to be administered.

(2) "Relevant body" means a body directed by the Welsh Ministers under section 30(5) of the Act to carry out functions in connection with the administration of the Scheme.

Amendment of the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004

21.—(1) The National Health Service (General Medical Services Contracts) (Wales) Regulations 2004(**2**) are amended as follows.

(2) In Schedule 6, in paragraph 120—

(a) after sub-paragraph (2) insert—

(**1**) The directions and guidance given by the Welsh Ministers are available on http://www.nwssp.wales.nhs.uk or by making a request in writing to the Directorate for Health Policy, Primary Care Team, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

(**2**) S.I. 2004/478 (W. 48). Paragraph 120 of Schedule 6 was amended by regulation 11(33) of the National Health Service (Primary Medical Services) (Miscellaneous Amendments) (Wales) Regulations 2006 (S.I. 2006/358 (W. 46)) and paragraph 5(a) to (e) of Schedule 2 to the Health Care and Associated Professions (Indemnity Arrangements) Order 2014 (S.I. 2014/1887). There are other amendments but none are relevant.

"(2A) The Local Health Board, to the extent it considers reasonable and to the extent it may be reimbursed in accordance with the Clinical Negligence Scheme for NHS Trusts and Local Health Boards established by regulation 3 of the 2019 Regulations, shall indemnify the contractor in respect of that contractor's qualifying liabilities as specified in regulation 9(4) of the 2019 Regulations, provided the contractor—

(a) complies with the Local Health Board's claims management protocol for contractors (as amended from time to time); and

(b) does not have any other indemnity arrangement in force in connection with clinical services which the contractor provides under the contract at the time the qualifying liability arose.";

(b) in sub-paragraph (3)—

(i) at the end of paragraph (aa) omit "and";

(ii) for paragraph (b) substitute—

"(b) a contractor shall be regarded as having in force in relation to it an indemnity arrangement—

(i) if there is an indemnity arrangement in force in relation to a person employed or engaged by it in connection with clinical services which that person provides under the contract or, as the case may be, sub-contract; or

(ii) for its qualifying liabilities specified in regulation 9(4) of the 2019 Regulations, to the extent provided for under paragraph 120(2A);";

(iii) after paragraph (b) insert—

"(c) "the 2019 Regulations" means the National Health Service (Clinical Negligence Scheme) (Wales) Regulations 2019."

Revocation

22. The National Health Service (Clinical Negligence Scheme) Regulations 1996(**1**) are revoked.

(**1**) S.I. 1996/251.

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
4 March 2019

Explanatory Memorandum to
The National Health Service (Clinical Negligence Scheme) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The National Health Service (Clinical Negligence Scheme) (Wales) Regulations 2019

Vaughan Gething
Minister for Health and Social Services
5 March 2019

PART 1

1. Description

These Regulations make provision in connection with the Clinical Negligence Scheme for NHS Trusts and Local Health Boards in Wales ("the Scheme"). The Scheme enables members exercising functions in connection with the National Health Service in Wales to make provision for meeting liabilities to which the Scheme applies.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

The powers of the Welsh Ministers that are being relied upon to introduce the regulations are sections 30, 47(1), (2) and (4), and 203(9) and (10) of the National Health Service (Wales) Act 2006.

These Regulations revoke the National Health Service (Clinical Negligence Scheme) Regulations 1996 (S.I. 1996/251). These Regulations also make consequential amendments to the National Health Service (General Medical Services Contract) (Wales) Regulations 2004 (S.I. 2004/478 (W.48)).

These Regulations are being made under the negative resolution procedure

4. Purpose and intended effect of the legislation

Clinical negligence cover is a condition of registration in the UK for all regulated healthcare professionals, and in the case of medical practitioners, a condition of licence under s.44C of the Medical Act 1983. The cover can be an insurance policy, an indemnity arrangement, or a combination of both. .

There has been concern about increasing indemnity costs, which could potentially drive GPs away from the profession, resulting in an impact on services. It is estimated that indemnity premiums have increased by 7% per year on average between 2013 and 2017. Among the factors driving the increasing cost of indemnity is an ageing population; technological innovations in medicine which keep people alive longer; an increase in people living with complex conditions and an increasing claims culture. There is no evidence to suggest that deterioration in the quality of care has acted as a driver to increase the cost of indemnity. Increases in the last two years are estimated to be over 10% in total. The rising cost of indemnity subscriptions has been cited as one of the reasons why GPs are reducing their hours, and if the trend continues, may create a further shortage of GPs.

On the 14th May 2018, the Minister for Health and Social Services announced that the Welsh Government would introduce a state backed scheme to provide clinical negligence indemnity for providers of GP services in Wales. The scheme, which is planned to come into force on 1 April 2019, will cover all contracted GPs and other health professionals working in NHS general practice.

The scheme will help to address the concerns of GPs about the affordability of professional indemnity premiums and will deliver a sustainable, long term solution to address the increasing costs of professional indemnity.

The scheme will be aligned as far as possible to the state backed scheme to be introduced for providers of GP services in England on 1 April 2019. This will ensure that GPs in Wales are not at a disadvantage relative to GPs in England, will also help to ensure that GP recruitment and cross border activity will not be adversely affected by different schemes operating in England and Wales

The Regulations establish the Clinical Negligence Scheme for NHS Trusts and Local Health Boards to provide for all qualifying liabilities, from 1 April 2019, in tort and in contract.

The indemnity provided under the Scheme covers the clinical negligence liabilities of members (Local Health Boards and NHS Trusts) as well as those of non-member contractors who provide primary medical services by virtue of an arrangement with a member of the Scheme (e.g. a general medical services contract). The Scheme applies from 1 April 2019 in respect of all liabilities within its scope. This means that, from that date, members and contractors will automatically be covered by the Scheme in relation to such liabilities.

The Scheme will provide discretionary cover in respect of liabilities in tort (under the law of England and Wales) that arise in consequence of a breach of duty of care by a member or contractor (or other person employed, engaged or employed by a person engaged by a member or contractor) which results in physical injury or loss to a person. Claims made under the Scheme are expected to consist of mainly clinical negligence claims.

The Scheme will not cover private work, complaints, involvement in coroners' cases, GMC hearings and other matters relating to professional regulation. Any provision of these services will necessitate taking out separate indemnity insurance to cover private work and the other aspects not covered by the Scheme.

In November 2018, The Minister for Health and Social Services confirmed that Shared Services Partnership – Legal and Risk Services will operate that state backed scheme for GPs in Wales (Future Liability Scheme)

This Statutory Instrument is essential to establish the Scheme and facilitate its operation.

5. Consultation

Throughout the development of the policy for the Scheme, the Welsh Government has engaged, on an ongoing basis, with key stakeholders affected by the proposed changes, arising from the implementation of a state scheme, including Medical Defence Organisations , GPs, NHS Wales Shared Services Partnership - Legal and Risk Services and NHS Wales. This engagement process included meetings and other communications with stakeholders to assist them in understanding the proposals made and to elicit their views before final decisions were made on the Scheme policy. The process has also included the establishment of a Stakeholder Reference Group.

An informal, targeted, consultation was undertaken with the draft statutory instrument shared with stakeholders between 19th and 28th February 2019. The list of stakeholders included:

- Directors of Primary Care of Local Health Boards
- Associate Medical Directors of Local Health Boards
- Medical Directors of Local Health Boards
- Finance Directors of Local Health Boards
- Directors of Nursing of Local Health Boards
- General Practitioners Committee Wales
- Royal College of General Practitioners
- GP Practice Managers
- NHS Wales Shared Services Partnership - Legal and Risk Service

Six responses were received following the informal consultation. The responses sought clarification on the following points:

(a) Whether the scheme is a “discretionary” scheme (in line with the current medical defence organisations and GP current indemnity arrangements) or whether the scheme is contractual (similar to commercial insurers) and the way in which discretion will be applied by the scheme operator (Shared Services Partnership - Legal and Risk Services)
(b) The scope of the Scheme in terns of liability in tort and contractual liability.
(c) The scope of the scheme in terms of who is covered and what activities are covered.
(d) The way in which the scheme will be funded.
(e) Clarity on the information which Local Health Boards may request from GPs.
(f) Clarity as to whether the draft Regulations would capture all of WRP activity.
The Welsh Government responded to all queries, setting out the appropriate information and advising that the clarity sought will also be addressed in the Future Liability Scheme Guidance which will accompany Ministerial Directions in relation to the administration of the Scheme.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been prepared for this instrument as it imposes no costs or no savings, or negligible costs or savings on the public, private or charities and voluntary sectors.

A wide range of options were initially considered to address the issues with GP indemnity. The criteria included compatibility with primary care policy; sustainability; legal and financial risks; and transitional arrangements from the current position. The costs and benefits of each option are not presented here in detail due to the limited information that can be included because of the confidential commercial basis on which the analysis is based.

As highlighted above, the benefits of the state backed scheme help to address the concerns of GPs about the affordability of professional indemnity premiums and will deliver a sustainable, long term solution to address the increasing costs of professional indemnity. GPs will contribute towards the cost of the scheme, through the General Medical Services Contract.

This legislation has no impact on the statutory duties (sections 77-79 of the Government of Wales Act 2006) or statutory partners (sections 72-75 of that Act).

SL(5)373 – The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations (other than regulation 3(6)) are made under paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 to try to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Regulation 3 (6) is made under section 16 of the Food Safety Act 1990.

The Regulations make amendments to subordinate legislation applying in Wales in the field of genetically modified food and feed, materials and articles in contact with food and of determining the level of vinyl chloride released by those materials and articles.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires

Regulation 3 (6) is made under section 16 of the Food Safety Act 1990.

Section 48 (4A) of the Food Safety Act 1990 requires the Welsh Ministers to have regard to any relevant advice given by the Food Standards Agency before making any regulations under the Act.

The preamble to the Regulations does not state that Welsh Ministers have had regard to any relevant advice given. Whilst the Explanatory Memorandum states that it has been prepared by the Food Standards Agency it is also silent as to whether the requirements of section 48 (4A) of the Food Safety Act 1990 have been complied with.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee
13 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 425 (W. 99)

EXITING THE EUROPEAN UNION, WALES

AGRICULTURE, WALES

FOOD, WALES

The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, other than regulation 3(6), are made in exercise of the powers conferred on the Welsh Ministers by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Regulation 3(6) is made under section 16 of the Food Safety Act 1990 (c. 16) to amend the Materials and Articles in Contact with Food (Wales) Regulations 2012 to set the criteria applicable to the method for determining the level of vinyl chloride in materials and articles in contact with food and of determining the level of vinyl chloride released by those materials and articles.

These Regulations make amendments to subordinate legislation applying in Wales in the field of genetically modified food and feed, materials and articles in contact with food, and food additives, flavourings, enzymes and extraction solvents.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a

regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2019 No. 425 (W. 99)

EXITING THE EUROPEAN UNION, WALES

AGRICULTURE, WALES

FOOD, WALES

The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Sift requirements satisfied *11 February 2019*

Made *4 March 2019*

Laid before the National Assembly for Wales *5 March 2019*

Coming into force in accordance with regulation 1(3)

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018(**1**) and by section 16(2)(a) of the Food Safety Act 1990(**2**).

The requirements of paragraph 4(2) of Schedule 7 to the European Union (Withdrawal) Act (relating to the appropriate National Assembly for Wales scrutiny procedure for these Regulations) have been satisfied.

(**1**) 2018 c.16.

(**2**) 1990 c. 16. Section 16(2) was amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c. 28) ("the 1999 Act"). Functions formerly exercisable by "the Ministers" so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(**1**) there has been open and transparent public consultation during the preparation of these Regulations.

Title, application and commencement

1.—(1) The title of these Regulations is the Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on exit day.

The Genetically Modified Food (Wales) Regulations 2004

2. In the Schedule to the Genetically Modified Food (Wales) Regulations 2004(**2**), in Part 2, in the table, omit the entry for Article 8.6.

The Materials and Articles in Contact with Food (Wales) Regulations 2012

3.—(1) The Materials and Articles in Contact with Food (Wales) Regulations 2012(**3**) are amended as follows.

(2) In regulation 2(1), omit the definition of "Directive 84/500/EEC".

(3) In regulation 9, omit paragraph (b).

(4) For regulation 10 substitute—

> "**10.**—(1) The quantities of lead and cadmium transferred from a ceramic article must not exceed the limits set out in paragraph (5) as read with paragraphs (4) and (6).
>
> (2) Unless it is demonstrated that the materials used to make the ceramic article did not contain lead or cadmium, the quantities of lead and cadmium transferred from a ceramic article must be determined by means of a test, the conditions of which are specified in Schedule 3, using the method of analysis described in Schedule 4.
>
> (3) No person may place on the market a ceramic article that does not comply with the

(**1**) OJ No. L 31, 1.2.2002, p. 1, to which there are amendments not relevant to these Regulations.
(**2**) S.I. 2004/3220 (W. 276), to which there are amendments not relevant to these Regulations.
(**3**) S.I. 2012/2705 (W. 291), to which there are amendments not relevant to these Regulations.

requirements of paragraph (1) as read with paragraph (2).

(4) Where a ceramic article consists of a vessel fitted with a ceramic lid, the lead or cadmium limits (or both) which may not be exceeded (mg/dm^2 or mg/litre) must be that which applies to the vessel alone. The vessel alone and the inner surface of the lid must be tested separately and under the same conditions. The sum of the two lead or cadmium extraction levels obtained by this method must be related as appropriate to the surface area or the volume of the vessel alone.

(5) A ceramic article is to be recognised as satisfying the requirements of these Regulations relating to such articles if the quantities of lead and/or cadmium extracted during the test carried out under the conditions laid down in Schedule 3 and Schedule 4 do not exceed the following limits—

	Lead (Pb)	*Cadmium (Cd)*
Category 1: Articles which cannot be filled and articles which can be filled, the internal depth of which, measured from the lowest point to the horizontal plane passing through the upper rim, does not exceed 25 mm	0,8 mg/dm^2	0,07 mg/dm^2
Category 2: All other articles which can be filled	4,0 mg/l	0,3 mg/l
Category 3: Cooking ware; packaging and storage vessels having a capacity of more than three litres	1,5 mg/l	0,1 mg/l

(6) However, where a ceramic article does not exceed the above quantities by more than 50%, that article is nevertheless to be recognised as satisfying the requirements of these Regulations relating to such articles if at least three other articles with the same shape, dimensions, decoration and glaze are subjected to a test carried out under the conditions laid down in Schedule 3 and Schedule 4 and the average quantities of lead and/or cadmium

extracted from those articles do not exceed the limits set, with none of those articles exceeding those limits by more than 50%."

(5) After regulation 10 insert—

"**10A.**—(1) A person who places on the market a ceramic article which is not yet in contact with foodstuffs must provide a written declaration in accordance with Article 16 of Regulation 1935/2004 to accompany the article at the marketing stages up to and including the retail stage.

(2) The declaration must be issued by the manufacturer or by a seller in the United Kingdom and must contain the information laid down in Schedule 5.

(3) A person who manufactures or, in the course of a business, imports into the United Kingdom a ceramic article must on request make available to an authorised officer appropriate documentation to demonstrate that the ceramic article complies with the migration limits for lead and cadmium set out in regulation 10 including—

(a) the results of the analysis carried out;

(b) the test conditions;

(c) the name and the address of the laboratory that performed the testing.

(4) Paragraphs (1), (2) and (3) do not apply in relation to a ceramic article which is second-hand.

(5) The documentation specified in paragraph (3)(a), (b) and (c) is not required where documentary evidence is provided to show that the materials used to make the ceramic article did not contain lead or cadmium."

(6) In regulation 18, after paragraph (2) insert—

"(3) The method of analysis used for checking compliance with paragraph (1) must comply with the criteria set out in paragraphs (4), (5) and (6).

(4) The level of vinyl chloride in materials and articles and the level of vinyl chloride released by materials and articles to foodstuffs are determined by means of gas-phase chromatography using the 'headspace' method.

(5) For the purposes of determining vinyl chloride released by materials and articles to foodstuffs, the detection limit is 0.01 milligrams of vinyl chloride per kilogram of food.

(6) Vinyl chloride released by materials and articles to foodstuffs is in principle determined in the foodstuffs. When the determination in

certain foodstuffs is shown to be impossible for technical reasons, a food authority may permit determination by simulants for these particular foodstuffs."

(7) After Schedule 2, insert the new Schedules 3 to 5 set out in the Schedule to these Regulations.

The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013

4. In regulation 10(b) of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013(**1**), for "European Union" substitute "United Kingdom".

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
4 March 2019

(**1**) S.I. 2013/2591 (W. 255), to which there are amendments not relevant to these Regulations.

SCHEDULE Regulation 3(7)

"SCHEDULE 3 Regulation 10

BASIC RULES FOR DETERMINING THE MIGRATION OF LEAD AND CADMIUM

1. Test liquid

4 % (v/v) acetic acid, in a freshly prepared aqueous solution.

2. Test conditions

(a) Carry out the test at a temperature of 22 ± 2 °C for a duration of 24 ± 0,5 hours.

(b) When the migration of lead is to be determined, cover the sample by an appropriate means of protection and expose it to the usual lighting conditions in a laboratory. When the migration of cadmium or of lead and cadmium is to be determined, cover the sample so as to ensure that the surface to be tested is kept in total darkness.

3. Filling

(a) Samples which can be filled—

Fill the article with a 4 % (v/v) acetic acid solution to a level no more than 1 mm from the overflow point; the distance is measured from the upper rim of the sample. Samples with a flat or slightly sloping rim should be filled so that the distance between the surface of the liquid and the overflow point is no more than 6 mm measured along the sloping rim.

(b) Samples which cannot be filled—

The surface of the sample which is not intended to come into contact with foodstuffs is first covered with a suitable protective layer able to resist the action of the 4 % (v/v) acetic acid solution. The sample is then immersed in a recipient containing a known volume of acetic acid solution in such a way that the surface intended to come into contact with foodstuffs is completely covered by the test liquid.

4. Determination of the surface area

The surface area of the articles in Category 1 is equal to the surface area of the meniscus formed by the free liquid surface obtained by complying with the filling requirements set out in paragraph 3.

SCHEDULE 4 Regulation 10

METHODS OF ANALYSIS FOR DETERMINATION OF THE MIGRATION OF LEAD AND CADMIUM

1. Object and field of application

The method allows the specific migration of lead and/or cadmium to be determined.

2. Principle

The determination of the specific migration of lead and/or cadmium is carried out by an instrumental method of analysis that fulfils the performance criteria of paragraph 4.

3. Reagents

All reagents must be of analytical quality, unless otherwise specified.

Where reference is made to water, it means distilled water or water of equivalent quality.

(a) 4 % (v/v) acetic acid, in aqueous solution

Add 40 ml of glacial acetic acid to water and make up to 1 000 ml.

(b) Stock solutions

Prepare stock solutions containing 1 000 mg/litre of lead and at least 500 mg/litre of cadmium respectively in a 4 % acetic acid solution, as referred to in sub-paragraph (a).

4. Performance criteria of the instrumental method of analysis

(a) The detection limit for lead and cadmium must be equal to or lower than—

0,1 mg/litre for lead,

0,01 mg/litre for cadmium.

The detection limit is defined as the concentration of the element in the 4 % acetic acid solution, as referred to in paragraph 3(a), which gives a signal equal to twice the background noise of the instrument.

(b) The limit of quantification for lead and cadmium must be equal to or lower than—

0,2 mg/litre for lead,

0,02 mg/litre for cadmium.

(c) Recovery. The recovery of lead and cadmium added to the 4 % acetic acid solution, as referred to in paragraph 3(a), must lie within 80-120 % of the added amount.

(d) Specificity. The instrumental method of analysis used must be free from matrix and spectral interferences.

5. Method

(a) Preparation of the sample

The sample must be clean and free from grease or other matter likely to affect the test.

Wash the sample in a solution containing a household liquid detergent at a temperature of approximately 40 °C. Rinse the sample first in tap water and then in distilled water or water of equivalent quality. Drain and dry the sample so as to avoid any stain. The surface to be tested is not to be handled after it has been cleaned.

(b) Determination of lead and/or cadmium

The sample thus prepared is tested under the conditions laid down in Schedule 3.

Before taking the test solution for determining lead and/or cadmium, homogenise the content of the sample by an appropriate method, which avoids any loss of solution or abrasion of the surface being tested.

Carry out a blank test on the reagent used for each series of determinations.

Carry out determinations for lead and/or cadmium under appropriate conditions.

SCHEDULE 5 Regulation 10A

DECLARATION OF COMPLIANCE

1. The written declaration referred to in regulation 10A must contain the following information—

(a) the identity and address of the company which manufactures the finished ceramic article and of the importer who imports it into the United Kingdom;

(b) the identity of the ceramic article;

(c) the date of the declaration;

(d) the confirmation that the ceramic article meets relevant requirements in these Regulations and Regulation 1935/2004.

2. The written declaration must permit an easy identification of the goods for which it is issued and must be renewed when substantial changes in the production bring about changes in the migration of lead or cadmium or both."

Explanatory Memorandum to the Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

Vaughan Gething AM
Minister for Health and Social Services
5 March 2019

PART 1

1. Description

1.1 The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 ("this Instrument") amend the Statutory Instruments listed below relating to EU-derived domestic regulations applying in Wales on: a) genetically modified food; b) materials and articles in contact with food; c) food additives, flavourings and enzymes. These amendments are required to address deficiencies in the relevant domestic legislation arising from EU Exit and ensure that the statute book remains operable following the UK's exit from the EU

- The Genetically Modified Food (Wales) Regulations 2004
- Materials and Articles in Contact with Food (Wales) Regulations 2012
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013

1.2 The instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ("the 2018 Act") defines as 29 March 2019 at 11.00 pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This Instrument is being made using the powers conferred by paragraph 1(1) of the 2018 Act. Regulation 3(6) is being made in exercise of powers under section 16(2) of the Food Safety Act 1990.

2.2 As set out in the Ministerial statement in Part 2 of the Annex to this Explanatory Memorandum it is proposed that the instrument be subject to negative procedure.

2.3 The instrument makes minor and technical changes so it is considered appropriate to make this Instrument subject to annulment in pursuance of a resolution of the National Assembly for Wales.

2.4 The Constitutional and Legislative Affairs Committee considered the Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 on 11 February 2019 and agreed that the appropriate procedure for these Regulations is the negative resolution procedure. A copy of the published report can be found at http://www.assembly.wales/laid%20documents/cr-ld12150/cr-ld12150-e.pdf

2.5 Regulation 3(6), made in exercise of powers under the Food Safety Act 1990, amends the Materials and Articles in Contact with Food (Wales) Regulations 2012 to make provision about the criteria applicable to the method for determining the level of vinyl chloride in materials and articles

in contact with food and of determining the level of vinyl chloride released by those materials and articles.

3. Legislative background

3.1 This Instrument is being made partly using the power in Part 1 of Schedule 2 to the European Union (Withdrawal) 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

3.2 In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

The Genetically Modified Food (Wales) Regulations 2004

4.1 The Genetically Modified Food (Wales) Regulations 2004 make provision for the execution and enforcement of Commission Regulation 1829/2003. This Commission Regulation provides a regulatory framework for the pre-market scientific assessment and authorisation of Genetically Modified Organisms (GMOs) for use in food and feed.

4.2 The authorisation process involves a risk assessment based on rigorous scrutiny of scientific data by the European Food Safety Authority (EFSA) in line with international guidelines. GM for food/feed use is authorised by means of EU Decisions by the European Commission. These risk assessment and risk management functions are, respectively, being transferred to Food Standards Agency and 'appropriate authority' post-EU exit by the Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019**1**. Authorisations are granted for a period of 10 years and the EU law sets down a process and requirements for renewal of authorisations for further 10-year periods, and provides for the withdrawal of authorisations in appropriate circumstances.

4.3 EU law requires that all authorised GM food and feed must have a method of detection scientifically assessed and validated by the European Union Reference Laboratory (EU-RL). The EU law also sets down labelling and traceability requirements for authorised GM food and feed placed on the market. This is to ensure that consumers and food/feed businesses operators are clear that they are handling or using GM food/feed.

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1 SI 2019/XX.

Materials and Articles in Contact with Food (Wales) Regulations 2012

4.4 These Regulations implement the following EU Regulations in relation to Wales.

- Regulation (EU) No 10/2011 provides rules on plastic materials and articles intended to come into contact with food
- Regulation (EC) No 1935/2004 provides rules on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC
- Regulation (EC) No 1895/2005 provides rules on restrictions of use of certain epoxy derivatives in materials and articles intended to come into contact with food.
- Regulation (EC) No 2023/2006 establishes good manufacturing practices for materials and articles intended to come into contact with food.
- Regulation (EC) No 450/2009 provides rules on active and intelligent materials and articles intended to come into contact with food.

4.5 The EU Regulations, as implemented by these Regulations, provide for the protection of food from hazards that may arise from materials and articles into which they may come into contact throughout the food chain.

The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013

4.6 The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013 make provision for the execution of Commission Regulations 2065/2003 (smoke flavourings), 1332/2008 (food enzymes), 1333/2008 (food additives), 231/2012 (specifications for food additives approved under 1333/2008) and 1334/2008 (flavourings). It also partially transposes Directive 2009/32 on extraction solvents.

4.6 Food improvement agents are used in or on food for a technological purpose during its production or storage. They are also used to improve the taste, texture, and appearance of food. In general, the harmonised EU legislation governing these substances requires a pre-market risk assessment and authorisation before being placed on the market. The legislation provides lists of permitted substances, applicable specifications, conditions of use, as well as categories of foods in which they may be used. The legislation also provides specific labelling requirements for certain food products sold to consumers. This includes a mandatory warning on products containing aspartame as it is a source of phenylalanine, which could be detrimental to those suffering from Phenylketonuria.

Why is it being changed?

4.6 The minor and technical changes made by this Instrument are necessary to ensure that the domestic legislation enforcing the retained EU law continues to operate effectively.

4.7 The specific changes being proposed to the Regulations detailed at 1.1 above are as follows:

The Genetically Modified Food (Wales) Regulations 2004

- Instrument makes a consequential amendment caused by the revocation of an Article in the relevant EU Regulation which is enforced by the above domestic Regulations.

Materials and Articles in Contact with Food (Wales) Regulations 2012

- Removing redundant references to EU Directives where other amendments mean that there is no longer a need to refer to them
- Replacement of requirements on Lead and Cadmium
- Replacement of requirements on Vinyl Chloride

The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013

- Amends references to the “EU” and the “territory of the EU”.

What will it now do?

4.9 This instrument will ensure the Welsh regulations, which provide enforcement powers for the retained EU law relating to genetically modified food, materials and articles in contact with food, food additives, flavourings and enzymes will continue to be operable and enforceable in Wales after the UK leaves the EU. The instrument does not make any change to the way the Welsh regulations operate. The changes make only minor, technical amendments to ensure the Welsh regulations are operable after the UK leaves the EU.

5. Consultation

5.1 A four-week consultation was undertaken in Wales on the principle of the proposed amendments. No responses were received in relation to the amendments made by these Regulations and no changes have been made as a result of consultation. Parallel consultation was undertaken in England, Scotland and Northern Ireland.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has not been prepared to accompany these Regulations as there are no changes to the current controls and

therefore no identified costs to consumers, businesses or enforcement authorities associated with implementation of these Regulations.

6.2 This legislation has no impact on the statutory duties (sections 77-79 of the Government of Wales Act 2006) or statutory partners (sections 72-75 of the Government of Wales Act 2006).

Annex 1
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	**Where the requirement sits**	**To whom it applies**	**What it requires**
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriat e-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising	A statement that the SI does no more than is appropriate.

		powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the

		Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	A statement to explain why it is appropriate to create such a sub-delegated power.

Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Health and Social Services has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure).”

This is the case because the amendments being made are minor and technical in nature. There is no change to policy.

Appropriateness statement

The Minister for Health and Social Services has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate.”

This is the case because the minor and technical changes are necessary to ensure the accuracy and operability of the statute book on exit day. There is no change in policy.

2. Good reasons

The Minister for Health and Social Services has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.”

These are that failure to make this legislation would result in Welsh legislation relating to genetically modified food, food additives, enzymes and flavourings and novel foods failing to operate effectively after the UK leaves the EU.

3. Equalities

The Minister for Health and Social Services has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

The Minister for Health and Social Services has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Vaughan Gething, The Minister for Health and Social Services, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

The explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

5. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

Not applicable/required.

Agenda Item 4.16

SL(5)376 – The Local Government Finance (Amendment) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are made by Welsh Ministers pursuant to section 11 of, and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018.

These Regulations make minor and consequential amendments to the following legislation in the area of local government finance:

1. The Central Rating List (Wales) Regulations 2005 ("the **2005 Regulations**"); and
2. The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013.

The Regulations correct deficiencies resulting from the UK's withdrawal from the EU.

Procedure

Negative.

Technical Scrutiny

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 3(2) amends the definition of "licence exempt operator" and "licence holder" in Regulation 7 of the 2005 Regulations to (in part) reflect amended terminology proposed to be inserted into the Railway (Licensing of Railway Undertakings) Regulations 2005 by the Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 ("the **2019 Regulations**"). As at the date of this report, the 2019 Regulations have been laid before the UK Parliament for approval but have not yet been made.

The amendments made by the subject Regulations, and the amendments proposed to be made by the 2019 Regulations, both come into force on exit day. However, should the 2019 Regulation not be approved by the UK Parliament, the amendments made by the subject Regulations would cause ambiguity in the 2005 Regulations in that the above definitions would refer to a "railway undertaking licence", which will not be a term appearing in the Railway (Licensing of Railway Undertakings) Regulations 2005 until the 2019 Regulations have been made.

2. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 3(2) amends the definition of "licence exempt operator" and "licence holder" in Regulation 7 of the 2005 Regulations. However, in Regulation 7(3) of the 2005 Regulations there is a definition of "EEA

State" which is now redundant as a result of the amendment made by Regulation 3(2) of the subject Regulations, but which has not been omitted by these Regulations.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

The explanatory memorandum accompanying these Regulations, in Part 2 of the Annex, contains statements made by the Minister for Finance and Trefnydd in accordance with the European Union (Withdrawal) Act 2018 relating to the "Service Charges (Consultation Requirements) (Wales) (Amendment) (EU Exit) Regulations 2019", as opposed to the subject Regulations.

Implications arising from exiting the European Union

No further points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 436 (W. 104)

EXITING THE EUROPEAN UNION, WALES

LOCAL GOVERNMENT, WALES

The Local Government Finance (Amendment) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 11 of, and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to local government finance legislation.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2019 No. 436 (W. 104)

EXITING THE EUROPEAN UNION, WALES

LOCAL GOVERNMENT, WALES

The Local Government Finance (Amendment) (Wales) (EU Exit) Regulations 2019

Sift requirements satisfied *18 February 2019*

Made *4 March 2019*

Laid before the National Assembly for Wales *5 March 2019*

Coming into force in accordance with regulation 1

The requirements of paragraph 4(2) of Schedule 7 to the European Union (Withdrawal) Act 2018(**1**) (relating to the appropriate scrutiny procedure for these Regulations) have been satisfied.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 11 of, and paragraph 1(1) of Schedule 2 to, that Act.

Title and commencement

1. The title of these Regulations is the Local Government Finance (Amendment) (Wales) (EU Exit) Regulations 2019 and they come into force on exit day(**2**).

(**1**) 2018 c. 16.
(**2**) "Exit day" is defined in section 20(1) to (5) (interpretation) of the European Union (Withdrawal) Act 2018.

Amendment of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013

2.—(1) The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013(**1**) are amended as follows.

(2) In regulation 4 (power to require information), in paragraph (11)—

(a) for the definition of "bank" substitute—

""bank" ("*banc*") means—

(a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000(**2**) to accept deposits; or

(b) a person who does not require permission under that Act to accept deposits, in the course of that person's business in the United Kingdom;";

(b) for the definition of "insurer" substitute—

""insurer" ("*yswiriwr*") means a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance;".

Amendment of the Central Rating List (Wales) Regulations 2005

3.—(1) The Central Rating List (Wales) Regulations 2005(**3**) are amended as follows.

(2) In regulation 7 (railway hereditaments), in paragraph (3), for the definition of "licence exempt operator" and "licence holder" substitute—

""licence exempt operator" and "licence holder" have the meanings given by sections 10(6) and 83(1) respectively of the Railways Act 1993(**4**) except that licence holder also includes a holder of a railway undertaking licence granted pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005(**5**); and".

Rebecca Evans
Minister for Finance and Trefnydd, one of the Welsh Ministers
4 March 2019

(**1**) S.I. 2013/588 (W. 67), to which there are amendments not relevant to these Regulations.
(**2**) 2000 c. 8.
(**3**) S.I. 2005/422 (W. 40). Relevant amendments were made by S.I. 2005/3050 and S.I. 2016/645.
(**4**) 1993 c. 43.
(**5**) S.I. 2005/3050.

Explanatory Memorandum to: The Local Government Finance (Amendment) (EU Exit) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Welsh Government's Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.
The Constitutional and Legislative Affairs Committee agreed on 18 February 2019, that these Regulations met the sifting requirements and the appropriate procedure for these Regulations is the negative resolution procedure.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Local Government Finance (Amendment) (EU Exit) (Wales) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018.

Rebecca Evans AM
Minister for Finance and Trefnydd
5 March 2019

PART 1

1. Description

1.1 This instrument makes an amendment to:

- The Central Rating List (Wales) Regulations 2005;
- Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013.

1.2 Regulation 7 of the Central Rating List (Wales) Regulations 2005 makes provision about railway hereditaments. Amendments are required to be made in consequence of the Railway (Licensing of Railway Undertakings) (Amendment etc) (EU Exit) Regulations 2019. This SI will enable the legal framework for train operator licensing in Great Britain to continue after exit day. The amendments made to the Wales Regulations by this SI will remove the definition of "EEA State" and further amend the definition of "licence exempt operator" and "licence holder" to remove references to a "European licence and replace it with "railway undertaking licence"

1.3 The amendment to the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 amends the definitions of "bank" and insurer" to remove reference to EEA firms authorised under the Financial Services and Markets Act 2000.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This instrument is being made under section 11 of and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018. As set out in the Ministerial Statement in Part 2 of this Explanatory Memorandum it is proposed that the instrument be subject to annulment procedure. Instruments under the 2018 Act must first be laid for sifting by the Constitutional and Legislative Affairs Committee. The instrument makes minor and technical changes and has no substantive effect on the law in Wales and as such should be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

2.1.1 Further Ministerial Statements can be found in Part 2 of this Explanatory Memorandum. These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A. The Constitutional and Legislative Affairs Committee agreed at its meeting on 18 February 2019 that these Regulations met the sifting requirements and the appropriate procedure for these Regulations is the negative resolution procedure. A link to the CLA Committee's report can be found at: http://www.assembly.wales/laid%20documents/cr-ld12192/cr-ld12192-e.pdf

3. Legislative background

3.1 This instrument relates to the withdrawal of the United Kingdom from the European Union and is being made under section 11 of and Schedule 2 to the European Union (Withdrawal) Act 2018. The Minister for Finance and Trefnydd has made the relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The Railway (Licensing of Railway Undertakings) Regulations 2005 (SI 2005/3050) created the concept of a "European licence". Any operator established in Great Britain could be granted a European Licence subject to the Office of Rail and Road being satisfied that the applicant met certain conditions regarding their professional competence etc. Once granted, the licence was valid for the holder to provide train services in any EEA Member State. The 2005 Regulations implemented into domestic law the EU Directives that were introduced for this purpose (EU 95/18, as amended by EU 2001/13 and EU 2004/49).

4.2 Regulation 4 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 provides a power to billing authorities to require prescribed persons to provide information in certain circumstances. "Any bank" and "any insurer" are included in the list of the persons prescribed and those terms are defined. The current definitions of "bank" and "insurer" include reference to EEA firms authorised under the Financial Services and Markets Act 2000.

Why is it being changed?

4.3 The minor and technical changes made to these instruments address the failure of retained EU law to operate effectively following the withdrawal of the United Kingdom from the European Union.

What will it now do?

4.4 After exit day, the European licence regime in the Railway (Licensing of Railway Undertakings) Regulations 2005 will not be able to operate effectively unless the references they contain to Europe and European institutions are corrected. The amendments made to those Regulations will enable the legal framework for train operator licensing in Great Britain provided for in the 2005 Regulations to continue after exit day. The amendments made to provision made about railway hereditaments in the Central Ratings List (Wales) Regulations 2005 are made in consequence of the changes made to the licensing regime.

4.5 The amendment to the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 is consequential upon the EEA

Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 which repeals provision in the 2000 Act that deals with authorisations granted to EEA firms to carry on regulated activities. This SI makes amendments to the definitions of “bank” and insurer” to remove references to EEA firms which will no longer be automatically granted authorisations under the Financial Services and Markets Act 2000.

5 Consultation

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6 Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has not been conducted. No policy change is introduced through the amending Regulations. The Regulations are technical in nature and intended solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6.2 These amending Regulations have no impact on the statutory duties as set out in sections 77 to 79 of the Government of Wales Act 2006 or the statutory partners as set out in Sections 72 to 75 of the Government of Wales Act 2006.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The Minister for Finance and Trefnydd, Rebecca Evans AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Service Charges (Consultation Requirements) (Wales) (Amendment) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because this instrument provides for necessary technical amendments and makes no substantive changes to the law in Wales".

2. Appropriateness statement

2.1 The Minister for Finance and Trefnydd, Rebecca Evans AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Service Charges (Consultation Requirements) (Wales) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate. This is the case because the instrument makes amendments which are technical in nature and designed to address failures of retained EU Law to operative effectively after exit day".

3. Good reasons

3.1 The Minister for Finance and Trefnydd, Rebecca Evans AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is because the instrument makes technical amendments to substitute the e-notification system for the Official Journal of the European Union."

4. Equalities

4.1 The Minister for Finance and Trefnydd, Rebecca Evans AM, has made the following statement:

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

4.2 The Minister for Finance and Trefnydd, Rebecca Evans AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"I have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this Explanatory Memorandum.

6. Criminal offences

6.1 Not applicable.

7. Legislative sub-delegation

7.1 Not applicable.

8. Urgency

8.1 Not applicable.

Agenda Item 4.17

SL(5)392 – The Sea Fish Licensing (Wales) Order 2019

Background and Purpose

This Order prohibits, subject to exceptions, fishing by Welsh fishing boats (article 3) and fishing by Crown Dependency Boats within the Welsh zone (article 4) unless such boats are licensed by the Welsh ministers. It also prohibits fishing by foreign boats (article 5) within the Welsh zone unless those boats are so licensed.

Article 6 of the Order revokes the Sea fish Licensing Order 1992 (S.I. 1992/2633) and instruments which varied or amended it so far as they relate to Welsh fishing boats and fishing within the Welsh zone.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

The Explanatory Memorandum makes the following points, which we draw to the attention of the National Assembly:

i. "There are two purposes of this instrument:

- To make provision about the licensing of fishing boats from outside the UK when fishing in Welsh waters after the UK leaves the EU. This provision is essential for Wales to control access by non-UK vessels to its domestic waters, and endorse any international agreements on fisheries access to UK waters post EU exit. This provision will be required if the Fisheries Bill does not receive Royal Assent by 29 March 2019. This will ensure continuity of current management measures in Welsh waters and allow us to progress our policy objectives beyond EU exit day.

- To consolidate and update existing legislation, including the Sea Fish Licensing Order 1992 (S.I. 1992/2663) with the subsequent orders which varied and amended it. The consolidated instrument prohibits fishing, subject to exceptions, by Welsh fishing boats unless they are licensed by the Welsh Ministers. The Order revokes the existing legislation (listed in Schedule I)." [paragraph 4.1]

ii. "The preferred approach is to introduce these powers through the UK Fisheries Bill, so that there is a consistent approach across the UK. However in the event that the UK Fisheries Bill does not gain Royal Assent before the UK leaves the EU, it is important that foreign vessels access to Welsh waters can still be controlled and managed." [paragraph 4.4]

iii. "Failure to introduce this legislation would mean fishing by foreign vessels within Welsh waters post EU exit would be unlicensed and therefore uncontrolled and unmanaged. There would be no provision to license foreign vessels under current domestic legislation, or EU legislation being retained under the Withdrawal Act. This could jeopardise the UK's ability to enter into international fisheries agreements as provision to license and allow managed access to foreign vessels in Welsh waters would not be in place. This could also result in the UK not being able to demonstrate the management of marine resources effectively, which could have an adverse impact on fish stocks in Welsh waters and could attract criticism internationally." [paragraph 4.7]

iv. "The provisions in this instrument are being implemented to align Wales with the rest of the UK and to give consistency for the interim period between exit from the EU and the UK Fisheries Bill gaining Royal Assent. A decision was required urgently and it was deemed the introduction of this legislation was the only realistic option available to Ministers and therefore, taking account of a fixed EU exit day over which Welsh Government has no control, no consultation was carried out." [paragraph 5.1]

v. "To address any concerns from Welsh licence holders, this legislation will be brought to the attention of affected stakeholders (all Welsh fishing vessel licence holders and the Wales Marine and Fisheries Advisory Group) immediately it comes into force." [paragraph 5.2]

The Committee reported on the Welsh Government's Legislative Consent Memorandum on the Fisheries Bill on 12 February 2019.

Implications arising from exiting the European Union

The issues noted in the merits scrutiny above demonstrate the complexity of EU exit-related legislation.

Government Response

A government response is not required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 March 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 507 (W. 117)

SEA FISHERIES, WALES

The Sea Fish Licensing (Wales) Order 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prohibits, subject to exceptions, fishing by Welsh fishing boats (article 3) and fishing by Crown Dependency Boats within the Welsh zone (article 4) unless such boats are licensed by the Welsh ministers. It also prohibits fishing by foreign boats (article 5) within the Welsh zone unless those boats are so licensed.

Article 6 of the Order revokes the Sea fish Licensing Order 1992 (S.I. 1992/2633) and instruments which varied or amended it so far as they relate to Welsh fishing boats and fishing within the Welsh zone.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2019 No. 507 (W. 117)

SEA FISHERIES, WALES

The Sea Fish Licensing (Wales) Order 2019

Made *6 March 2019*

Laid before the National Assembly for Wales

7 March 2019

Coming into force in accordance with article 1(1)

The Welsh Ministers in exercise of the powers conferred by sections 4(1) and (2), 4A, 15(3) and 20(1) of the Sea Fish (Conservation) Act 1967(**1**) and now vested in them(**2**), make the following Order.

(**1**) 1967 c.84 ("the 1967 Act"); section 4 was substituted by section 3 of the Fishery Limits Act 1976 (c.86) and amended by section 20 of the Fisheries Act 1981 (c.29), section 1 of the Sea Fish (Conservation) Act 1992 (c.60), sections 4, 196 and 197 of the Marine and Coastal Access Act 2009 (c.23) and S.I. 1999/1820. The definitions of "relevant British fishing boat" and "foreign fishing boat" are contained in section 4(12). Section 4A was inserted by section 21 of the Fisheries Act 1981 and amended by section 3 of the Sea Fish (Conservation) Act 1992, section 6 of the Marine and Coastal Access Act 2009 and S.I. 1999/1820. Section 15 was amended by section 22, paragraph 38 of Schedule 1 and Part II of Schedule 2 to the Sea Fisheries Act 1968 (c.77), section 25 of the Fisheries Act 1981, paragraph 15 of Schedule 2 to the Fishery Limits Act 1976, section 199 of the Marine and Coastal Access Act 2009. Section 20 was amended by section 21 of the Fisheries Act 1981 and section 7 of the Sea Fish (Conservation) Act 1992.

(**2**) The functions of the Ministers under sections 4, 4A, 15(3), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). So far as exercisable in relation to the Welsh zone, the functions of the Ministers under sections 4, 4A and 15(3) of the 1967 Act, were transferred to the Welsh Ministers by article 4(1)(b) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760) on a concurrent basis. Those functions were further transferred, on a concurrent basis, in relation to Welsh fishing boats beyond

Title, commencement and application

1.—(1) This Order may be cited as the Sea Fish Licensing (Wales) Order 2019 and comes into force on exit day.

(2) This Order applies in relation to Wales, the Welsh zone and Welsh fishing boats wherever they may be.

Interpretation

2. In this Order –

"the baselines" (*"y gwaelodlinau"*) means the baselines established by the Territorial Sea (Baselines) Order 2014(**1**);

"length" (*"hyd"*) in relation to a boat, means the length calculated in accordance with the rules specified in Article 2(1) of Regulation (EU) 2017/1130 of the European Parliament and of the Council defining characteristics for fishing vessels;

"mile" (*"milltir"*) means an international nautical mile of 1,852 metres;

and

"Welsh fishing boat" (*"cwch pysgota Cymreig"*) means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and the entry of which in the register specifies a port in Wales as the port to which the boat is to be treated as belonging.

"the Welsh zone" (*"parth Cymru"*) has the same meaning as in the Government of Wales Act 2006(**2**) (see section 158(1) and (3) of that Act).

Prohibition on Welsh fishing boats fishing without a licence and exceptions

3.—(1) Subject to paragraph (2), fishing by Welsh fishing boats (wherever they may be) is prohibited unless authorised by a licence granted by the Welsh Ministers.

(2) The prohibition in paragraph (1) does not apply to—

(a) fishing for salmon or migratory trout;

(b) fishing by any boat used wholly for the purpose of conveying persons wishing to fish solely for pleasure;

(c) fishing in waters lying within 12 miles of the baselines from which the breadth of the

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the seaward limit of the Welsh zone by paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006.

(**1**) S.I. 2014/1353.

(**2**) 2006 c.32.

territorial sea adjacent to the Isle of Mann and the Channel Islands respectively is measured, but not extending beyond a line every point of which is equidistant from the nearest points of such baselines and the corresponding baselines adjacent to the United Kingdom and France respectively;

(d) fishing for common eels (*Anguilla anguilla*) by any boat the length of which is not more than 10 metres; or

(e) fishing by any boat the length of which is not more than 10 metres and which does not have an engine to power the boat.

Prohibition on fishing in the Welsh zone by non-British-owned Crown Dependencies fishing boats

4.—(1) Fishing in the Welsh zone by a fishing boat registered under the law of Jersey, Guernsey or the Isle of Man that is not British-owned is prohibited unless authorised by a licence granted by the Welsh Ministers.

(2) Paragraph (1) does not apply to fishing

(a) for salmon or migratory trout;

(b) for common eels (Anguilla Anguilla) by a boat whose length is 10 metres or less;

(c) by a boat whose length is 10 metres or less and which does not have an engine to power the boat;

(d) by a boat used wholly for the purpose of conveying persons wishing to fish for pleasure.

Prohibition on fishing in the Welsh zone by foreign fishing boats

5.—(1) Fishing in the Welsh zone by a foreign fishing boat is prohibited unless authorised by a licence granted by the Welsh Ministers.

(2) In paragraph (1), "foreign fishing boat" means a fishing boat that—

(a) is not registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995(**1**);

(b) is not registered under the law of Jersey, Guernsey or the Isle of Man; and

(c) is not British-owned(**2**).

(**1**) 1995 c.21.

(**2**) See section 22(1) (as amended by paragraph 38(c) of Schedule 13 to the Merchant Shipping Act 1995 (c. 21) and S.I. 1999/1820) for the definition of "British-owned".

Revocations

6. In so far as they apply in relation to Welsh fishing boats, the instruments specified in the first column of the Schedule are revoked to the extent specified in the third column of the Schedule.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers
6 March 2019

SCHEDULE Article 6

Revocations

Title	*Reference*	*Extent of revocation*
The Sea Fish Licensing Order 1992[(1)]	S.I. 1992/2633	In so far as it applies to Welsh fishing boats
The Sea Fish Licensing (Variation) Order 1993(**1**)	S.I. 1993/188	In so far as it applies to Welsh fishing boats
The Sea Fish Licensing (Variation) (No.2) Order 1993	S.I. 1993/2291	In so far as it applies to Welsh fishing boats
The Scotland Act 1998 (Consequential S.I. 1999/1820 Modifications) (No.2) Order 1999	S.I. 1999/1820	Paragraph 150 of Schedule 2

(**1**) Varied by S.I. 1993/188 and 2291 and amended by S.I. 1999/1820.

Explanatory Memorandum to The Sea Fish Licensing (Wales) Order 2019.

This Explanatory Memorandum has been prepared by the Marine and Fisheries Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Sea Fish Licensing (Wales) Order 2019. I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
7 March 2019

1. Description

1.1. This Order seeks to consolidate the Sea Fish Licensing Order 1992 (SI 1992/2663) with subsequent orders which varied and amended it and to make provisions about the licensing of fishing boats from outside the UK when fishing in Welsh waters after the UK leaves the EU.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1. None

3. Legislative background

3.1. Regulation (EU) No 1380/2013 sets out the objectives for the conservation and sustainable exploitation of European fisheries resources under the Common Fisheries Policy (CFP).

3.2. Article 5 of Regulation (EU) No 1380/2013 sets out general rules on access to EU waters. EU vessels have equal access to all Union waters and resources in areas between 12 and 200 nautical miles from Member State baselines.

3.3. When the UK leaves the EU and the CFP, article 5 of Regulation (EU) No 1380/2013 will cease to apply and foreign vessels will not have automatic rights to fish within UK waters. New licensing provisions are required to control and manage access by foreign vessels within UK waters after the UK leaves the EU.

3.4. Section 4 of the Sea Fish (Conservation) Act 1967 provides the power to prohibit fishing within British Fishery Limits by fishing vessels without the authority of a licence.

3.5. This Order is made in exercise of the powers conferred by Sections 4(1) and (2), 4A, 15(3) and 20(1) of the Sea Fish Conservation Act 1967.

3.6. Powers under sections 4, 4A, 15(3) were transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). So far as exercisable in relation to the Welsh zone, those functions were transferred to the Welsh Ministers by article 4(1) (b) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760) on a concurrent basis. In relation to Welsh fishing boats beyond the seaward limit of the Welsh zone, the same functions were further transferred, on a concurrent basis by paragraph 2(1) of Schedule 3A to the Government of Wales Act 2006.

3.7. Section 20(1), so far as is relevant, provides that any Order made under sections 4 and 4A may be varied or revoked by a further order under the same section. Since this provision is parasitic upon the powers in sections 4 and 4A it did not need to be separately transferred to the Welsh Ministers.

3.8. This Order applies to Wales, the Welsh zone and Welsh fishing boats wherever they may be.

4. Purpose & intended effect of the legislation

4.1. There are two purposes of this instrument:

- To make provision about the licensing of fishing boats from outside the UK when fishing in Welsh waters after the UK leaves the EU. This provision is essential for Wales to control access by non-UK vessels to its domestic waters, and endorse any international agreements on fisheries access to UK waters post EU exit. This provision will be required if the Fisheries Bill does not receive Royal Assent by 29 March 2019. This will ensure continuity of current management measures in Welsh waters and allow us to progress our policy objectives beyond EU exit day.
- To consolidate and update existing legislation, including the Sea Fish Licensing Order 1992 (S.I. 1992/2663) with the subsequent orders which varied and amended it. The consolidated instrument prohibits fishing, subject to exceptions, by Welsh fishing boats unless they are licensed by the Welsh Ministers. The Order revokes the existing legislation (listed in Schedule I).

Policy background

4.2. The UK will be an independent coastal state upon leaving the EU and the Common Fisheries Policy (CFP) which means EU vessels will no longer have automatic access to fish within Welsh waters. Access to waters and fish stocks will be the subject of an annual coastal states agreement.

4.3. Future access by foreign vessels to UK and Welsh waters will need to be authorised and controlled under the saved Sustainable Management of the External Fishing Fleet regulation. New legislation to specify which countries are allowed access, and ensure their compliance with domestic fisheries management rules, will be required. Failure to manage fishing activity can lead to over exploitation of fish stocks and resultant wider damage to the marine ecosystem. This could jeopardise our vision of a more competitive, profitable and sustainable UK fishing industry, and meeting international commitments on sustainable fishing.

4.4. The preferred approach is to introduce these powers through the UK Fisheries Bill, so that there is a consistent approach across the UK. However in the event that the UK Fisheries Bill does not gain Royal Assent before the UK leaves the EU, it is important that foreign vessels access to Welsh waters can still be controlled and managed.

4.5. It is intended to achieve this by prohibiting foreign vessels from fishing within Welsh waters without the authority of a licence issued by the Welsh Ministers. This will allow the Welsh Government to regulate the activity of foreign fishing vessels. Conditions attached to licences will detail the specific requirements for fishing within Welsh waters, such as vessel monitoring systems (VMS) and catch reporting. It will also allow fisheries managers to respond quickly to issues, such as introducing closed areas or gear requirements following scientific advice.

4.6. Vessel licensing is an effective method for managing fisheries sustainably, and is currently applied to the domestic fishing fleet. It is intended that foreign vessels will comply with the same standards applied to the domestic fleet, along with additional requirements such as catch and position reporting. This will help ensure fishing opportunities are managed fairly across both fleets, and that wider sustainability objectives are met.

4.7. Failure to introduce this legislation would mean fishing by foreign vessels within Welsh waters post EU exit would be unlicensed and therefore uncontrolled and unmanaged. There would be no provision to license foreign vessels under current domestic legislation, or EU legislation being retained under the Withdrawal Act. This could jeopardise the UK's ability to enter into international fisheries agreements as provision to license and allow managed access to foreign vessels in Welsh waters would not be in place. This could also result in the UK not being able to demonstrate the management of marine resources effectively, which could have an adverse impact on fish stocks in Welsh waters and could attract criticism internationally.

European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

4.8. This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union, because it introduces provisions for controlling access to Welsh waters as a result of leaving the EU and CFP.

5. Consultation

5.1. The provisions in this instrument are being implemented to align Wales with the rest of the UK and to give consistency for the interim period between exit from the EU and the UK Fisheries Bill gaining Royal Assent. A decision was required urgently and it was deemed the introduction of this legislation was the only realistic option available to Ministers and therefore, taking account of a fixed EU exit day over which Welsh Government has no control, no consultation was carried out.

5.2. To address any concerns from Welsh licence holders, this legislation will be brought to the attention of affected stakeholders (all Welsh fishing vessel licence holders and the Wales Marine and Fisheries Advisory Group) immediately it comes into force.

Part 2 - Regulatory Impact Assessment (RIA)

6. Options

Option 1 - Do nothing

6.1. Upon exit from the EU, existing legislation (Article 5 of Regulation (EU) No 1380/2013) which sets out general rules on access to EU waters, allowing EU vessels equal access to all UK waters and resources between 12 and 200 nautical miles from the baselines will no longer apply to any part of the UK. A new mechanism is therefore required to control and manage access by foreign vessels within UK waters. If the UK came to an international agreement with another coastal state we would not have the powers to be able to comply with it in response of licensing. We would have powers under retained EU legislation (Sustainable Management of External Fishing Fleet Regulations (SMEFF)) to allow access to Welsh waters through an authorisation, however this does not provide the necessary vires to effectively control & manage foreign vessels. This could result in the UK not being able to demonstrate the management of marine resources effectively, which could have an adverse impact on fish stocks in Welsh waters and could attract criticism internationally.

Option 2 - The UK Fisheries Bill

6.2. The UK Fisheries Bill provides a range of powers including changes to existing legislation to allow UK and Devolved Ministers to license foreign fishing vessels. This is the preferred approach so that there is a consistent approach across the UK. However, in the event that the UK Fisheries Bill does not gain Royal Assent before the UK leaves the EU, it is important that foreign vessels access to Welsh waters can still be controlled and managed.

Option 3 – The Sea Fish Licensing (Wales) Order 2019

6.3. In the absence of the UK Fisheries Bill, this is our **preferred option**. It would introduce powers for Wales to license foreign vessels, and prohibit foreign vessels from fishing within Welsh waters without a valid licence. Vessel licensing is currently in place for domestic vessels, which the Welsh Government are responsible for in Welsh waters. We expect the EU and other third countries will send lists of vessels seeking access to fish within Welsh waters. In response, the Welsh Government (through the Marine Management Organisation (MMO) as the Single Issuing Authority) will licence those vessels Welsh Government wishes to allow to fish in Welsh waters. Each vessel will be issued with an individual licence to fish within Welsh waters, which will refer to the conditions that vessels must comply with. Under a separate draft SI (The Sea Fishing (Licences and Notices) (Wales) Regulations 2019 licences for foreign vessels could be issued electronically and variations of the same could be issued on the Welsh Government website. Welsh Government staff will be able to amend foreign licence conditions in response to specific issues, by electronically updating the Welsh Government website. These powers are essential to effectively manage access by foreign vessels post EU exit.

7. Costs and benefits

Option 1

7.1. There are no costs identified to Welsh business, charities and/or the voluntary sector as Welsh vessels will be unaffected by these measures.

7.2. Any benefits for the domestic fleet by not licensing foreign vessels are difficult to assess and are likely far outweighed by the risk of not having the powers to manage our marine resources effectively and comply with international agreements.

Options 2 and 3 (The costs of both these options are the same).

7.3. There are no direct costs identified to Welsh business, charities and/or the voluntary sector as these measures will only significantly change the licensing regime in relation to foreign vessels. We anticipate that between 100 and 200 foreign vessels would likely come into Welsh waters. As foreign businesses, these are outside of the scope of the RIA.

7.4. There will be a cost to Government to license the foreign vessels, these costs are set out in the RIA for the Sea Fishing (Licenses and Notices) (Wales) Order 2019.

7.5. A benefit of these options is that they ensure a level playing field for UK and foreign vessels and give maximum enforcement possibilities in relation to individual vessels.

7.6. Option 3 is the preferred option if the UK Fisheries Bill is not passed by EU exit day as it will allow Wales to endorse any international agreements the UK enters which require signatories to manage access to fisheries by foreign boats. The SI will act as a stop-gap until such time as the UK Fisheries Bill gains Royal Assent. Option 1 is not considered appropriate as it does not allow the full suite of control and enforcement methods in place for domestic vessels to be deployed against individual foreign vessels. Option 2 is the preferred long term option, however in the event that the UK Fisheries Bill does not gain Royal Assent before the UK leaves the EU, it is important that foreign vessels access to Welsh waters can still be controlled and managed.

Agenda Item 4.18

SL(5)335 - The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations (Part 2) make amendments (that come into effect the day after the day which they are made) to the Plant Health (Wales) Order 2018 (SI 2018/1064) to transpose certain provisions in the following:

- Council Directive 69/464/EEC on control of Potato Wart Disease
- Council Directive 93/85/EEC on the control of potato ring rot
- Council Directive 2007/33/EC on the control of potato cyst nematodes and repealing Directive 69/465/EEC

The provisions concern the planting of certain *solanaceous* species and the control of relevant plant pests.

In addition, Parts 3-5 of these Regulations (which come into force on exit day) make amendments to the following subordinate legislation relating to plant health in order to address failure of retained EU law to operate effectively and other deficiencies:

- The Plant Health (Wales) Order 2019 (SI 2018/1064)
- The Plant Health etc (Fees) (Wales) Regulations (SI 2018/1179)

These Regulations also revoke The Potatoes Originating in Egypt (Wales) Regulations (SI 2004/2245).

Procedure

Affirmative

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2

1. **Standing Order 21.2 (vii)– that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In regulation 4, of this instrument there is an error in the Welsh version at paragraph (o).

The English version says-

“Further investigations

13. If any suspected occurrence or confirmed presence of Potato cyst nematodes **in Wales** results from…”

The Welsh version says-

“Ymchwiliadau pellach

13. Os yw unrhyw achos a amheuir o Lyngyr tatws neu unrhyw achos o bresenoldeb Llyngyr tatws a gadarnhawyd yn deillio o…"

There is no reference to "in Wales" in the Welsh version.

2. **Standing Order 21.2 (vii)– that there appear to be inconsistencies between the meaning of its English and Welsh texts**.

In regulation 27(a) the inserted sub-para (e) refers to the United Kingdom in the English text, but the Welsh text refers to Prydain Fawr (GB).

3. Standing Order 21.2 (vii)– that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 55(c) there is an error in the Welsh version. Paragraph (c) of that regulation inserts wording after paragraph 1A of Schedule 16 to the Plant Health (Wales) Order 2018. The inserted wording at 1AB(b) states-

'yn achos tatws hadyd a, phan fo'n briodol, **thatws** eraill, cynnal profion swyddogol ar samplau gan ddefnyddio'r dull a nodir yn EPPO PM 7/21'

This should state-

'yn achos tatws hadyd a, phan fo'n briodol, **datws** eraill, cynnal profion swyddogol ar samplau gan ddefnyddio'r dull a nodir yn EPPO PM 7/21'

4. **Standing Order 21.2(vi) in respect of this instrument – that the drafting appears to be defective.**

In regulation 34(iv) (aa) – there is no paragraph 13 of part E of the list of controlled material.

5. **Standing Order 21.2(vi) in respect of this instrument – that the drafting appears to be defective**.

In regulation 44 at paragraph (g), reference is made to 'Part A of Annex 3 to Commission Directive 2008/61/EC. It should refer to Annex III of Commission Directive 2008/61/EC in both the English and Welsh versions.

6. **Standing Order 21.2(vi) in respect of this instrument – that the drafting appears to be defective.**

In regulation 53(e)(ii) and (g) reference is made to 'Annex 3 to Directive 2007/33/EC'. It should refer to Annex III to Directive 2008/33/EC in the English version concerning regulation 53(e)(ii) and both the English and Welsh version concerning regulation 53(g).

7. **Standing Order 21.2(vi) in respect of this instrument – that the drafting appears to be defective**.

In regulation 54 at paragraph (e) in the two places it occurs, reference is made to 'Annex 3 to Directive 93/85/EEC' should refer to 'Annex III to Directive 93/85/EEC in both the English and Welsh versions.

Merits Scrutiny

The following point are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

These Regulations create two offences.

The amendments made by regulation 13 and regulation 48 include a new offence in relation to the new import requirements on plant health checking on arrival in Wales and provide the ability to enforce and prosecute serious cases of non-compliance.

An offence is also added to enforce any failure to comply with any requirement in a general notice issued by the Welsh Ministers under the Plant Health (Wales) Order 2018 in respect of a demarcated area under regulation 5(k) and regulation 48. EU decisions (retained direct EU legislation) require the Welsh Ministers to demarcate areas around a pest outbreak and take measures to eradicate and contain the outbreak.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 March 2019

Draft Regulations laid before the National Assembly for Wales under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

PLANT HEALTH, WALES

The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made, in part, in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Part 2 makes amendments to the Plant Health (Wales) Order 2018 to transpose certain provisions in Council Directive 69/464/EEC on control of Potato Wart Disease (OJ No. L 323, 24.12.1969, p.1), Council Directive 93/85/EEC on the control of potato ring rot (OJ No. L 259, 18.10.1993, p.1), Council Directive 98/57/EC on the control of *Ralstonia solanacearum* (Smith) Yabuuchi et al. (OJ No. L 235, 21.8.1998, p.1), and Council Directive 2007/33/EC on the control of potato cyst nematodes and repealing Directive 69/465/EEC (OJ No. L 156, 16.6.2007, p.12).

Parts 3 to 5 make amendments to subordinate legislation relating to plant health in order to address failures of retained EU law to operate effectively and other deficiencies (in particular the deficiencies referred to in paragraphs (a) to (d) and (g) of section 8(2) of the European Union (Withdrawal) Act 2018) arising from the withdrawal of the United Kingdom from the European Union.

Part 3 amends the Plant Health (Wales) Order 2018 (S.I. 2015/610). Part 4 amends the Plant Health etc. (Fees) (Wales) Regulations 2018.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before the National Assembly for Wales under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

PLANT HEALTH, WALES

The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(2)

The Welsh Ministers make these Regulations in exercise of the powers conferred by—

(a) in relation to Part 1, the powers mentioned in paragraphs (b) and (c);

(b) in relation to Part 2, section 2(2) of the European Communities Act 1972(**1**);

(c) in relation to Parts 3 to 5, paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**2**).

The Welsh Ministers are designated(**3**) for the purposes of section 2(2) of the European Communities

(**1**) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), the Schedule, Part 1. It is prospectively repealed by the European Union (Withdrawal) Act 2018 (c. 16), section 1 from exit day (see section 20 of that Act).

(**2**) 2018 c. 16. *See* section 20(1) of that Act for the definition of "devolved authority".

(**3**) S.I. 2010/2690.

Act 1972 in relation to the common agricultural policy of the European Union.

A draft of this instrument has been laid before and approved by the National Assembly for Wales in accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 1

Introductory

Title, commencement and application

1.—(1) The title of these Regulations is the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019.

(2) They come into force as follows—

(a) as regards this Part and Part 2, on the day after the day on which they are made;

(b) as regards the remainder, on exit day.

(3) They apply in relation to Wales.

PART 2

Amendment of the Plant Health (Wales) Order 2018

2. The Plant Health (Wales) Order 2018(**1**) is amended as follows.

3. In Schedule 13, in paragraph 3, for "A notice under article 32 may require" substitute "An inspector must serve a notice under article 32 requiring".

4. In Schedule 14—

(a) omit paragraph 1;

(b) for paragraph 2 substitute—

"In this Schedule—

"field" (*"cae"*) means an area which has been demarcated as a field for the purposes of Article 3 of Directive 2007/33/EC(**2**);

"host plants" (*"planhigion cynhaliol"*) means plants with roots of *Capsicum* spp., *Solanum lycopersicum* L. or *Solanum melongena* L.;

(**1**) S.I. 2018/1064 (W.223).
(**2**) OJ No. L 156, 16.6.2007, p. 12.

"infested field" (*"cae wedi ei heigio"*) means a field which is recorded as infested pursuant to paragraph 2B;

"notice" (*"hysbysiad"*) means a notice under article 32;

"susceptible bulbs" (*"bylbiau sy'n dueddol o gael plâu neu glefydau"*) means bulbs, tubers or rhizomes, grown in soil and intended for planting, other than those for which there is evidence by their packaging or by other means that they are intended for sale to final consumers not involved in professional plant or cut flower production, of *Allium ascalonicum* L., *Allium cepa* L., *Dahlia* spp., *Gladiolus* Tourn. Ex L., *Hyacinthus* spp., *Iris* spp., *Lilium* spp., *Narcissus* L. or *Tulipa* L.;

"susceptible material" (*"deunydd sy'n dueddol o gael plâu neu glefydau"*) means host plants, susceptible bulbs or susceptible plants;

"susceptible plants" (*"planhigion sy'n dueddol o gael plâu neu glefydau"*) means plants with roots of *Allium porrum* L., *Asparagus officinalis* L., *Beta vulgaris* L., *Brassica* spp. or *Fragaria* L.";

(c) after paragraph 2, insert—

"Official investigations and surveys

2A. The Welsh Ministers must ensure that—

(a) official investigations are carried out in accordance with Articles 4 and 5 of Directive 2007/33/EC for the presence of Potato cyst nematodes in fields in which seed potatoes or susceptible material intended for the production of plants for planting are to be planted or stored;

(b) official surveys are carried out in accordance with Article 6 of Directive 2007/33/EC for the presence of Potato cyst nematodes in fields used for the production of potatoes, other than those intended for the production of seed potatoes.

Official records

2B. The Welsh Ministers must ensure that the results of each official investigation or official survey carried out pursuant to paragraph 2A are recorded to indicate whether Potato cyst nematodes were found in the field during the investigation or survey.

2C. Where the officially approved measures set out in Section 3(C) of Annex 3 to Directive 2007/33/EC have been taken in a field which has been recorded as infested pursuant to paragraph 2B and, following the completion of those measures, the presence of Potato cyst nematodes is not confirmed, the Welsh Ministers must ensure that the record is updated accordingly.";

(d) in paragraph 3—

(i) omit the heading;

(ii) for the words from "the field", in the first place it occurs, to the end, substitute "an infested field which specifies the boundaries of the field";

(e) in paragraph 4, for the words from "pursuant" to "Directive 2007/33/EC," substitute "in accordance with paragraph 2C";

(f) after paragraph 4, insert—

"Official designation

4A. An inspector must by notice designate as contaminated any potatoes or susceptible material which comes from a field that has been officially recorded as infested under paragraph 2B or any susceptible material which has been in contact with soil in which Potato cyst nematodes have been found.";

(g) in paragraph 5—

(i) in sub-paragraph (a)—

(aa) omit "in a demarcated field";

(bb) after "seed potatoes" insert "in an infested field";

(ii) in sub-paragraph (b), for the words from "in a" to the end substitute "any susceptible material which is intended for planting in an infested field";

(h) in paragraph 6, for the words from "in a" to the end substitute "of susceptible bulbs or susceptible plants in an infested field";

(i) in paragraph 8—

(i) omit "in a demarcated field";

(ii) for the words from "unless" to the end substitute "in an infested field unless authorised to do so by an inspector";

(j) after paragraph 8 insert—

"**8A.** An authorisation under paragraph 8 must be by notice and may only be given if the inspector is satisfied that all reasonable steps to suppress Potato cyst nematodes in the field have been taken in accordance with the official

control programme adopted for the suppression of Potato cyst nematodes.";

(k) in paragraph 9, for the words from "plants" to "field", in the second place it occurs, substitute "host plants which have been designated as contaminated pursuant to paragraph 4A";

(l) after paragraph 10 insert—

"Controls on potatoes for industrial processing or grading

10A. No person may move any potatoes which have been designated as contaminated pursuant to paragraph 4A and are intended for industrial processing or grading, unless authorised to do so by an inspector.

10B. An authorisation under paragraph 10A must be by notice and must require the potatoes to be delivered to a processing or grading plant that has appropriate and officially approved waste disposal procedures that ensure that there is no risk of Potato cyst nematodes spreading.";

(m) in paragraph 11, for the words from "plants" to the end substitute "susceptible bulbs or susceptible plants which have been designated as contaminated pursuant to paragraph 4A, unless they have been subject to the measures set out in Section 3(A) of Annex 3 to Directive 2007/33/EC and an inspector has confirmed by notice that they are no longer contaminated";

(n) omit paragraph 12;

(o) at the end insert—

"Further investigations

13. If any suspected occurrence or confirmed presence of Potato cyst nematodes in Wales results from a breakdown or change in the effectiveness of a resistant potato variety which relates to an exceptional change in the composition of nematode species, pathotype or virulence group, the Welsh Ministers must ensure that the species of Potato cyst nematode and, where applicable, the pathotype and virulence group involved, is investigated and confirmed by appropriate methods.".

5. In Schedule 15—

(a) in paragraph 1—

(i) at the appropriate place insert—

""official testing" (*"profion swyddogol"*) means testing in an official laboratory or an officially supervised laboratory;";

(ii) in the definition of "notice" (*"hysbysiad"*), after "means" insert "in Part A to C";

(b) after paragraph 1 insert—

"PART A

Official surveys and testing

1A. The Welsh Ministers must ensure that systematic official surveys for Potato ring rot are carried out on tubers of *Solanum tuberosum* L. and, where appropriate, on plants of *Solanum tuberosum* L., originating in Wales in accordance with Article 2(1) of Directive 93/85/EEC(**1**).

1B. Where the presence of Potato ring rot in susceptible material is suspected, the Welsh Ministers must ensure that—

(a) official testing is carried out using the method set out in Annex 1 to Directive 93/85/EEC and in accordance with the conditions specified in point 1 of Annex 2 to Directive 93/85/EEC to confirm or refute its presence;

(b) the following are retained and appropriately conserved pending completion of the official testing—

(i) all tubers sampled, and wherever possible, all plants sampled;

(ii) any remaining extract and additional preparation material for the screening tests;

(iii) all relevant documentation; and

(c) pending the confirmation or refutation of its presence, where suspect diagnostic visual symptoms of Potato ring rot have been seen or symptoms of Potato ring rot have been identified by a positive immunofluorescence test or other appropriate positive test—

(i) the movement of all lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except

(**1**) OJ No. L 259, 18.10.1993, as amended by Commission Directive 2006/56/EC (OJ No. L 182, 4.7.2006, p. 1).

where it has been established that there is no identifiable risk of Potato ring rot spreading;

(ii) steps are taken to trace the origin of the suspected occurrence; and

(iii) additional appropriate precautionary measures based on the level of estimated risk to prevent any spread of the plant pest are taken.

1C. A notice may contain measures for the purposes of paragraph 1B(c)(i) to (iii).

PART B

Measures to be taken following the confirmation of the presence of Potato ring rot

1D. If the presence of Potato ring rot is confirmed in a sample of susceptible material following official testing carried out pursuant to paragraph 1B(a) or 1E, the Welsh Ministers must ensure that—

(a) the susceptible material, the consignment or lot and any object from which the sample was taken and, where appropriate, the place of production and field from which the susceptible material was harvested is designated as contaminated by an inspector;

(b) an inspector determines the extent of the probable contamination through pre- or post-harvest contact or through any production link with anything designated as contaminated under sub-paragraph (a), taking into account the provisions in point 1 of Annex 3 to Directive 93/85/EEC;

(c) a zone is demarcated by an inspector on the basis of the designation made under sub-paragraph (a), taking into account the provisions in point 2 of Annex 3 to Directive 93/85/EEC.

1E. Where susceptible material has been designated as contaminated under paragraph 1D(a), the Welsh Ministers must ensure that testing is carried out on potato stocks which are clonally related to that susceptible material in the manner specified in paragraph 1B in order to determine the probable primary source of infection and the extent of the probable contamination.

1F. Any such testing must be carried out on as much susceptible material as is necessary to determine the probable primary source of infection and the extent of the probable contamination.

1G. Any designation by an inspector under this Part must be made by notice.

1H. Where any susceptible material or object is determined by an inspector under paragraph 1D(b) to be possibly contaminated, the inspector must by notice designate that material or object as possibly contaminated.

PART C";

(c) in paragraph 3—

(i) for the words before sub-paragraph (a) substitute "Where susceptible material or an object has been designated as contaminated or possibly contaminated under Part B, an inspector must serve a notice requiring that";

(ii) in sub-paragraph (a)—

(aa) at the beginning insert "in the case of";

(bb) after "material" insert ", the material";

(iii) in sub-paragraph (b)—

(aa) at the beginning insert "in the case of";

(bb) after "material" insert ", the material";

(iv) in sub-paragraph (c)—

(aa) in the words before paragraph (i), at the beginning insert "in the case of" and after "object", in the second place it occurs, insert ", the object";

(bb) in paragraph (ii), after "Potato ring rot" insert "surviving or";

(d) in paragraph 5—

(i) in the heading, omit "which may be required";

(ii) in the words before sub-paragraph (a), for "may" substitute "must";

(e) in paragraph 6(c), at the end insert ", and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to Directive 93/85/EEC";

(f) in paragraph 7(c)—

(i) after “potatoes for” insert “seed or”;

(ii) at the end insert “, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to Directive 93/85/EEC”;

(g) in paragraph 8—

(i) in sub-paragraph (a)—

(aa) at the beginning, insert “where an inspector is satisfied that the risk of volunteer potato plants and other naturally-found host plants of Potato ring rot has been eliminated,”;

(bb) in paragraph (iii), omit the words from “and an” to the end;

(ii) in sub-paragraph (d), at the end, insert “and a requirement that official testing be carried out on harvested tubers in each field using the method set out in Annex 1 to Directive 93/85/EEC”;

(h) in paragraph 9, for “A notice may” substitute “Except where the Welsh Ministers have published a notice under Part D, a notice must”;

(i) after paragraph 10 insert—

“**10A.** Where an inspector serves a notice containing the first set of eradication measures, the Welsh Ministers must ensure that an official survey is carried out in relation to the field mentioned in paragraph 6(d) in accordance with Article 2 of Directive 93/85/EEC.”;

(j) in paragraph 12(a), after “Potato ring rot” insert “and to remove all host plants”;

(k) after paragraph 13 insert—

“PART D

Demarcation of zones for the control of Potato ring rot

14. This Part applies where an inspector has demarcated a zone pursuant to paragraph 1D(c).

15. The Welsh Ministers may, by notice, specify—

(a) how long the zone is to remain demarcated; and

(b) the measures which apply in the demarcated zone.

16. A notice under paragraph 15—

(a) must be in writing;

(b) must describe the extent of the demarcated zone;

(c) must specify the date on which each measure takes effect;

(d) must be published in a manner appropriate to bring it to the attention of the public; and

(e) may be amended, suspended or revoked, in whole or in part, by further notice.

17. Any premises which are partly within and partly outside a demarcated zone must be treated as within that zone for the purposes of this Schedule, except where the part which is outside the demarcated zone is not in Wales.

18. A notice published in accordance with paragraph 16 is to be treated as having been served on—

(a) any occupier or other person in charge of any premises within the demarcated zone; and

(b) any person who operates machinery or carries out any other activity in relation to the production of potatoes within the demarcated zone.

19. A notice under paragraph 15 must specify that—

(a) any machinery or storage facilities at premises within the demarcated zone which are used for potato production must be cleansed and disinfected in an appropriate manner so that there is no identifiable risk of Potato ring rot surviving or spreading;

(b) during the specified period, only certified seed potatoes or seed potatoes grown under official control may be planted and any seed potatoes grown in a place of production which is possibly contaminated must be officially tested after harvesting;

(c) during the specified period, potatoes intended for planting must be handled separately from all other potatoes at premises within the zone or that a system of cleansing and, where appropriate, disinfection must be carried out between the handling of seed and ware potatoes.

20. The Welsh Ministers must ensure that during the specified period—

(a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by an inspector;

(b) an official survey is carried out in accordance with Article 2 of Directive 93/85/EEC;

(c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.

21. For the purposes of paragraphs 19 and 20, the "specified period" means the period specified in the notice, which must be at least three growing seasons following the year in which the relevant zone was demarcated.".

6. In Schedule 16—

(a) in paragraph 1, in the definition of "notice" for "Part A" substitute "Parts A to C";

(b) after the heading to Part A insert—

"Official surveys and testing

1A. The Welsh Ministers must ensure that annual systematic official surveys are carried out to identify the presence of Potato brown rot on susceptible material originating in Wales in accordance with Article 2 of Directive 98/57/EC(**1**).

1B. Where the presence of Potato brown rot is suspected, the Welsh Ministers must ensure that—

(a) official testing is carried out to confirm or refute its presence—

(i) in the case of susceptible material, using the method set out in Annex 2 to Directive 98/57/EC and in accordance with the conditions specified in point 1 of Annex 3 to Directive 98/57/EC;

(ii) in any other case, using any officially approved method;

(b) pending the confirmation or refutation of its presence, where suspect diagnostic visual symptoms of Potato brown rot have been seen and a positive result in a rapid screening test has been obtained or a positive result in the screening tests specified in point 2

(**1**) OJ No. L 235, 21.8.1998, p. 1, as amended by Commission Directive 2006/63/EC (OJ No. L 206, 27.7.2006, p. 36).

of section 1 and section 3 of Annex 2 to Directive 98/57/EC has been obtained—

(i) the movement of all plants and tubers from all crops, lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato brown rot spreading;

(ii) steps are taken to trace the origin of the suspected occurrence; and

(iii) additional appropriate precautionary measures based on the level of estimated risk are taken to prevent any spread of Potato brown rot.

1C. A notice may contain measures for the purposes of paragraph 1B(b)(i) to (iii).

PART B

Measures to be taken following confirmation of the presence of Potato brown rot

1D. If the presence of Potato brown rot is confirmed following official testing carried out pursuant to paragraph 1B, the Welsh Ministers must ensure that the actions specified in paragraphs 1E to 1G are taken in accordance with sound scientific principles, the biology of Potato brown rot and the relevant production, marketing and processing systems of host plants of Potato brown rot.

1E. In the case of susceptible material, the actions are—

(a) an investigation by an inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to Directive 98/57/EC;

(b) further official testing, including on all clonally related seed potato stocks;

(c) the designation of the following as contaminated by an inspector—

(i) the susceptible material and consignment or lot from which the sample was taken;

(ii) any objects which have been in contact with that sample;

(iii) any unit or field of protected crop production and any place of production of the susceptible material from which the sample was taken;

(d) a determination by an inspector of the extent of probable contamination through pre- or post-harvest contact, through production, irrigation or spraying links or through clonal relationship;

(e) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (c), the determination made under sub-paragraph (d) and the possible spread of Potato brown rot in accordance with point 2(i) of Annex 5 to Directive 98/57/EC.

1F. In the case of host plants, other than susceptible material, where the production of susceptible material is identified to be at risk by an inspector, the actions are—

(a) an investigation by an inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to Directive 98/57/EC;

(b) the designation by an inspector of host plants from which the sample was taken as contaminated;

(c) a determination of the probable contamination by an inspector;

(d) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (b), the determination made under sub-paragraph (c) and the possible spread of Potato brown rot in accordance with point 2(i) of Annex 5 to Directive 98/57/EC.

1G. In the case of surface water and associated wild solanaceous host plants where production of susceptible material is identified by an inspector to be at risk through irrigation, spraying or flooding of surface water, the actions are—

(a) an investigation by an inspector to establish the extent of the contamination, which includes an official survey at appropriate times on samples of surface water and, if present, wild solanaceous host plants;

(b) the designation of surface water from which the sample was taken by an inspector, to the extent appropriate and on the basis of the investigation under sub-paragraph (a);

(c) a determination by an inspector of the probable contamination on the basis of the designation made under sub-paragraph (b);

(d) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (b), the determination made under sub-paragraph (c) and the possible spread of Potato brown rot in accordance with point 2(ii) of Annex 5 to Directive 98/57/EC.

PART C";

(c) in paragraph 3—

(i) for the words before sub-paragraph (a) substitute "Where susceptible material or any object has been designated as contaminated or possibly contaminated under Part B, an inspector must serve a notice requiring that";

(ii) in sub-paragraph (a)—

(aa) at the beginning insert "in the case of";

(bb) after "material" insert ", the material";

(iii) in sub-paragraph (b)—

(aa) at the beginning insert "in the case of";

(bb) after "material" insert ", the material";

(iv) in sub-paragraph (c)—

(aa) in the words before paragraph (i), at the beginning insert "in the case of" and after "object", in the second place it occurs, insert ", the object";

(bb) in paragraph (ii), after "Potato brown rot" insert "surviving or";

(d) in paragraph 5—

(i) for "may" substitute "must";

(ii) for "article 39(4)" substitute "Part B";

(e) in paragraph 6(c)—

(i) after "potato", in the first place it occurs, insert "or tomato";

(ii) after “weeds,” insert “during official inspections”;

(iii) at the end insert “, and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to Directive 98/57/EC”;

(f) in paragraph 7(b)—

(i) in paragraph (ii), at the beginning insert “during the fourth and fifth growing years,”;

(ii) in paragraph (iii), at the end insert “, provided that the field or the unit has been found free from volunteer potato and tomato plants and other host plants, including solanaceous weeds, during official inspections of Potato brown rot, for at least the two consecutive growing years prior to planting, and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to Directive 98/57/EC”;

(g) in paragraph 8—

(i) in sub-paragraph (a), after “year” insert “no host plants of Potato brown rot be planted or”;

(ii) in sub-paragraph (f), at the end, insert—

“;

(g) official inspections of growing crops at appropriate times and official testing of harvested potatoes in accordance with the method set out in Annex 2 to Directive 98/57/EC”;

(h) in paragraph 9, for the words before sub-paragraph (a) substitute “Except where the Welsh Ministers have published a notice under Part D, a notice in relation to a contaminated place of production must”;

(i) in paragraph 12(a) after “Potato brown rot” insert “and to remove all host plants of Potato brown rot”;

(j) after paragraph 13, for “PART B” substitute “PART D”;

(k) in paragraph 14, for “article 39(4)” substitute “Part B”;

(l) in paragraph 19—

(i) for the words before sub-paragraph (a) substitute “A notice under paragraph 15 must specify that”;

(ii) in sub-paragraph (a), for “stores” insert “storage facilities”;

(iii) in sub-paragraph (b), after “crops,” insert “during the specified period”;

(iv) in sub-paragraph (c), at the beginning, insert "during the specified period";

(v) in sub-paragraph (d), after "crops," insert "during the specified period";

(m) after paragraph 20 insert—

"**21.** The Welsh Ministers must ensure that during the specified period—

(a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by inspectors;

(b) an official survey is carried out in accordance with Article 2 of Directive 98/57/EC;

(c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.

22. For the purposes of paragraphs 19 and 21, the "specified period" means the period specified in the notice, which must be at least three growing seasons following the year in which the relevant zone was demarcated."

PART 3

Further amendment of the Plant Health (Wales) Order 2018: exiting the European Union

7. The Plant Health (Wales) Order 2018 is amended as follows.

8. In article 2—

(a) in paragraph (1)—

(i) at the appropriate places insert—

""appropriate UK plant health authority" (*"awdurdod iechyd planhigion priodol y DU"*) means—

(a) in relation to Wales, the Welsh Ministers;

(b) in relation to timber and forest pests in England, the Forestry Commissioners;

(c) otherwise in relation to England, the Secretary of State;

(d) in relation to Scotland, the Scottish Ministers;

(e) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

"EPPO PM 7/21" means the standard describing a diagnostic protocol for

Ralstonia solanacearum, *R. pseudosolanacearum* and *R. syzygii* approved by the European and Mediterranean Plant Protection Organization(**1**);

"EPPO PM 7/59" means the standard describing a diagnostic protocol for *Clavibacter michiganensis* subsp. sepedonicus approved by the European and Mediterranean Plant Protection Organization(**2**);

"the list of controlled material" (*"y rhestr o ddeunydd a reolir"*) means Schedule 6 to the Plant Health Regulations;

"the list of pest free area controlled material" (*"y rhestr o ddeunydd a reolir mewn ardaloedd sy'n rhydd rhag plâu"*) means Schedule 7 to the Plant Health Regulations;

"the list of prohibited infested material" (*"y rhestr o ddeunydd wedi ei heigio gwaharddedig"*) means Schedule 2 to the Plant Health Regulations;

"the list of prohibited material" (*"y rhestr o ddeunydd gwaharddedig")* means Schedule 3 to the Plant Health Regulations;

"the list of prohibited plant pests" *("y rhestr o blâu planhigion gwaharddedig"*) means Schedule 1 to the Plant Health Regulations;

"the list of regulated material" (*"y rhestr o ddeunydd a reoleiddir"*) means Schedule 4 to the Plant Health Regulations;

"pest free area" (*"ardal sy'n rhydd rhag plâu"*) means that part of a UK pest free area that is in Wales or, where the UK pest free area includes two or more separate parts of Wales, each such part;

"the Plant Health Regulations" *("y Rheoliadau Iechyd Planhigion"*) means the Plant Health (EU Exit) Regulations 2019;

"regulated plant pest" (*"pla planhigion a reoleiddir"*) means—

(**1**) First approved by the European and Mediterranean Plant Protection Organization in September 2003 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics.

(**2**) Approved by the European and Mediterranean Plant Protection Organization in September 2005 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics.

(a) a plant pest of a description specified in Part A, B or D of the list of prohibited plant pests;

(b) a plant pest of a description specified in Part C of the list of prohibited plant pests which relates to a pest free area;

(c) a plant pest of a description specified in column 2 of Part A, B or D of the list of prohibited infested material;

(d) a plant pest of a description specified in column 2 of Part C of the list of prohibited infested material which relates to a pest free area;

"UK pest free area" (*"ardal yn y DU sy'n rhydd rhag plâu"*) means an area in the United Kingdom which has been established as a pest free area in accordance with ISPM No. 4;

"UK plant passport" (*"pasbort planhigion y DU"*) means a label and, where appropriate, an accompanying document that meets the relevant requirements set out in Part A or B of Schedule 9, issued by or with the authority of the appropriate UK plant health authority, and includes any replacement of such a passport;

"UK territory" (*"tiriogaeth y DU"*) means Wales, England, Scotland or Northern Ireland;";

(ii) omit the definitions from "Annex II Part B" to "Annex IV Part B";

(iii) in the definition of "authorised officer" (*"swyddog awdurdodedig"*) for paragraphs (a) and (b) substitute—

"(a) in relation to a UK plant passport, an inspector acting under the authority of the appropriate UK plant health authority; or

(b) in relation to a phytosanitary certificate or phytosanitary certificate for re-export, an authorised representative of, or a public officer acting under, the national plant protection organisation of the country in which a phytosanitary certificate or phytosanitary certificate for re-export or a translation of a phytosanitary certificate or phytosanitary certificate for re-export is issued";

(iv) omit the definition of "citrus fruits for processing";

(v) for the definition of "consignment" substitute—

""consignment" (*"llwyth"*) means a quantity of goods covered by a single document required for customs or other formalities";

(vi) omit the definitions from "Decision 2002/757/EC" to "Decision (EU) 2017/198";

(vii) omit the definition of "Directive 2000/29/EC";

(viii) omit the definition of "Directive 2008/61/EC";

(ix) omit the definitions of "EU transit agreement", "EU transit goods", "Euro-Mediterranean area" and "Europe";

(x) in the definition of "European Union" (*"yr Undeb Ewropeaidd"*), omit "including the Isle of Man and the Channel Islands,";

(xi) omit the definition of "fruit";

(xii) in the definition of "importer" (*"mewnforiwr"*) , for "landing" substitute "consignment";

(xiii) omit the definition of "landed";

(xiv) in the definition of "national plant protection organisation" (*"sefydliad gwarchod planhigion cenedlaethol"),* for "European Commission", substitute "national plant protection organisation of the United Kingdom";

(xv) omit the definitions of "North America" and "nursery";

(xvi) in the definition of "official" (*"swyddogol"*), for "responsible official body" substitute "appropriate UK plant health authority";

(xvii) omit the definition of "official documentation";

(xviii) in the definition of "official label" (*"label swyddogol"*), for the words from "responsible" to the end substitute "appropriate UK plant health authority";

(xix) in the definition of "official statement" (*"datganiad swyddogol"*), after "in a" insert "UK";

(xx) omit the definitions of "plant health check" and "plant health movement document";

(xxi) for the definition of "planting" substitute—

""planting" (*"plannu"*) means any operation for the placing of plants to ensure

their subsequent growth, reproduction or propagation;";

(xxii) omit the definitions of "plant or shrub in tissue culture" and "plant passport";

(xxiii) for the definition of "plant product" substitute—

""plant product" (*"cynnyrch planhigion"*) means a product of plant origin, unprocessed or having undergone simple preparation, in so far as it is not a plant;";

(xxiv) omit the definition of "protected zone";

(xxv) omit the definition of "Regulation (EC) No 690/2008";

(xxvi) omit the definition of "responsible official body";

(xxvii) omit the definitions of "South America" and "Swiss plant passport";

(xxviii) in the definition of "third country" (*"trydedd wlad"*), for "European Union", substitute "United Kingdom";

(xxix) omit the definition of "the USA";

(b) in paragraph (3), for "Any" substitute "Unless expressly provided otherwise, any";

(c) omit paragraph (5);

(d) at the end insert—

"(6) Words and expressions which are not defined in this Order and which appear in the Plant Health Regulations have the same meaning in this Order as they have in the Plant Health Regulations.".

9. In article 3—

(a) at the appropriate places insert—

""correct phytosanitary certificate" (*"tystysgrif ffytoiechydol gywir"*), in relation to notifiable relevant material, means the phytosanitary certificate or phytosanitary certificate for re-export which has been issued—

(a) in the manner specified in article 7(2) to (6); and

(b) in respect of the prescribed requirements;

"EU transit material" (*"deunydd tramwy yr UE"*) means any notifiable relevant material from a third country, other than a country or territory in the European Union, which is consigned to the United Kingdom via the European Union and which, on its entry into the European Union, was not subject to—

(a) the formalities described in Article 13a of Directive 2000/29/EC; or

(b) to other similar official controls under Regulation (EU) 2017/625 of the European Parliament and of the Council, as it has effect in EU law;

"notified EU material" (*"deunydd hysbysedig yr UE"*) means any notifiable relevant material originating in the European Union or Switzerland which is intended to be, or has been, consigned to the United Kingdom from the European Union or Switzerland via a point of entry in Wales and whose arrival in Wales has been notified to the Welsh Ministers in accordance with article 6(1);

"prescribed requirements" (*"gofynion rhagnodedig"*), in relation to any notifiable relevant material, means the requirements specified in respect of the material in article 5;

"relevant Plant Health Order" (*"Gorchymyn Iechyd Planhigion perthnasol"*) means—

(a) in relation to relevant material destined for Wales, the Plant Health (Wales) Order 2018 or the Plant Health (Forestry) Order 2005 in its application to Wales;

(b) in relation to relevant material destined for England, the Plant Health (England) Order 2015 or the Plant Health (Forestry) Order 2005 in its application to England;

(c) in relation to relevant material destined for Scotland, the Plant Health (Scotland) Order 2005 or the Plant Health (Forestry) Order 2005 in its application to Scotland;

(d) in relation to relevant material destined for Northern Ireland, the Plant Health Order (Northern Ireland) 2018;

"trade documents" (*"dogfennau masnach"*) in relation to a consignment of notifiable relevant material, means the invoice, delivery note, consignment note or similar document which accompanies the consignment;";

(b) in the definition of "approved place of inspection" (*"man arolygu cymeradwy"*), at the end insert "or, in relation to other UK territories, by the appropriate UK plant health authority under equivalent provisions of the relevant Plant Health Order";

(c) omit the definition of "area of plant health control" (*"ardal rheolaeth iechyd planhigion"*);

(d) omit the definition of "the Customs Code" (*"y Cod Tollau"*);

(e) in the definition of "notifiable relevant material" (*"deunydd perthnasol hysbysadwy"*), for paragraphs (a) and (b) substitute—

"(a) of a description specified in Schedule 5 to the Plant Health Regulations;

(b) of a description specified in Schedule 7 to the Plant Health Regulations, originating in a third country;";

(f) omit the definition of "official body of destination";

(g) in the definition of "point of entry" (*"man cyrraedd"*)—

(i) at the end of paragraph (a) insert "in the United Kingdom";

(ii) in paragraph (b), for "; or" substitute "in the United Kingdom;";

(iii) at the end of paragraph (c) insert "in the United Kingdom";

(iv) after paragraph (c) insert—

"(d) in the case of relevant material which arrives by road, the initial destination of the material after its arrival in the United Kingdom;".

10. For article 4 substitute—

"**4.** This Part applies to plant pests and relevant material which are brought into Wales from a third country, whether directly or via another UK territory.".

11. In article 5—

(a) for paragraph (1) substitute—

"(1) No person may bring any of the following into Wales—

(a) any plant pest of a description specified in Part A, B or D of the list of prohibited plant pests;

(b) any relevant material of a description specified in column 2 of Part A, B or D of the list of prohibited infested material which is carrying or infected with a plant pest of a description specified in the corresponding entry in respect of that description of relevant material in column 3;

(c) any plant pest which, although not specified in Part A, B or D of the list of prohibited plant pests, or in column 3 of Part A, B or D of the list of prohibited infested material, is not normally present in Great Britain and which is likely to be injurious to plants in Great Britain;

(d) any relevant material of a description specified in column 2 of Part A or B of the list of prohibited material which originates in a third country specified in the corresponding entry in respect of that description of relevant material in column 3;

(e) any relevant material of a description specified in column 2 of Part A or D of the list of regulated material, unless the requirements specified in the corresponding entries in respect of that description of relevant material in column 3 are complied with;

(f) in the case of any relevant material which is destined for a pest free area, any plant pest of a description specified in column 2 of Part C of the list of prohibited plant pests which relates to that pest free area;

(g) in the case of any relevant material which is destined for a pest free area specified in column 4 of Part C of the list of prohibited infested material, any relevant material of a description specified in the corresponding entry in column 2 of Part C of that list which is carrying or infested with a plant pest of a description specified in the corresponding entry in column 3;

(h) in the case of any relevant material which is destined for a pest free area specified in column 4 of Part C of the list of regulated material, any relevant material of a description specified in the corresponding entry in column 2 of that Part, unless the requirements specified in the corresponding entries in respect of that relevant material in column 3 are complied with.";

(b) in paragraph (4), for "and (f)" substitute ", (g) and (h)";

(c) after paragraph (4) insert—

"(5) The prohibitions in paragraph (1)(b) to (h) do not apply to relevant material which enters a point of entry that is located in another UK territory and is discharged in that territory

in accordance with article 12 of the relevant Plant Health Order.".

12. In article 6—

(a) for paragraph (1) substitute—

"(1) No person may bring any notifiable relevant material into a point of entry that is located in Wales, unless notice is given in accordance with this article.";

(b) in paragraph (2)(c), for "the relevant material is landed", in both places it occurs, substitute "its arrival";

(c) for paragraph (3) substitute—

"(3) In the case of seed potatoes originating in the European Union or Switzerland, the following information must be included under item 13 of the notice set out in Schedule 11—

(a) their intended use;

(b) their intended destination;

(c) their variety and quantity;

(d) the identification number of the producer of the potatoes.

(3A) In the case of plants of *Castanea* Mill, *Fraxinus* L., *Olea europaea* L., *Pinus* L., *Platanus* L., *Prunus* L., *Quercus* L. or *Ulmus* L., intended for planting, originating in the European Union or Switzerland, the following information must be included under item 13 of the notice set out in Schedule 11—

(a) their intended destination;

(b) their genus, species and quantity;

(c) the identification number of the supplier of the plants.";

(d) in paragraph (5), for ", 16 and 30(3)" substitute "and 16".

13. After article 6 insert—

"EU transit material

6A.—(1**)** No person may bring any EU transit material into a RoRo port that is located in Wales unless that material is destined for a single approved place of inspection.

(2) Paragraph (1) is subject to article 8(1).

(3) In this paragraph, "RoRo port" means—

(a) a RoRo listed location within the meaning of regulation 130 of the Customs (Import Duty) (EU Exit) Regulations 2018; or

(b) if a notice has not been published pursuant to regulation 130(1) of those Regulations, a point of entry that—

(i) predominantly services roll-on/roll-off ferries operating between Wales and a member State; and

(ii) is listed in a notice published by the Welsh Ministers from time to time.".

14. In article 7—

(a) in paragraph (1)—

(i) for "land any notifiable relevant material" substitute "bring any notifiable relevant material into a point of entry that is located in Wales";

(ii) for ", as specified" substitute "which certifies that the material meets the prescribed requirements and meets the requirements";

(b) omit paragraph (4);

(c) in paragraph (7)(a), for "European Union", substitute "United Kingdom";

(d) in paragraph (8), for "articles 8(1) and 30(1) and (2)" substitute "article 8(1)".

15. In article 8(1)—

(a) in the words before sub-paragraph (a)—

(i) for "introduced" substitute "brought";

(ii) after "traveller" insert "coming from any third country, other than any country or territory in the European Union or Switzerland,";

(b) in sub-paragraph (a), for "(f)" substitute "(h)";

(c) after sub-paragraph (b) insert—

"(ba) article 6A(1);".

16. In article 9—

(a) for paragraph (1) substitute—

"(1) The following documents must be delivered to an inspector by the importer of a consignment of notifiable relevant material within three days of the date of its arrival in Wales—

(a) any phytosanitary certificate or phytosanitary certificate for re-export which is required under article 7 to accompany the consignment of notifiable relevant material; and

(b) in the case of notified EU material, the trade documents which accompany the consignment.";

(b) in paragraph (5), for the words from "one" to the end, substitute "a Customs procedure within the meaning of section 3(3) of the Taxation (Cross-border Trade) Act 2018";

(c) after paragraph (5) insert—

"(6) Paragraph (1) does not apply to any notifiable relevant material which is in the course of its consignment to an approved place of inspection in another UK territory.".

17. In article 10—

(a) at the beginning, insert—

"(A1) This article applies to notifiable relevant material, other than notified EU material, which is brought into a point of entry that is located in Wales.

(A2) No person may move any notifiable relevant material or cause any notifiable relevant material to be moved from its point of entry unless the material is being moved to a designated area of plant health control or an approved place of inspection.";

(b) in paragraph (1), for "area of plant health control" substitute "point of entry, or where the material is moved to a designated area of plant health control or an approved place of inspection in Wales, the designated area of plant health control or approved place of inspection,".

18. In article 11—

(a) in sub-paragraph (b), for "European Union", substitute "United Kingdom";

(b) omit sub-paragraph (d).

19. In article 12—

(a) at the beginning insert—

"(A1) This article applies to any notifiable relevant material, other than notified EU material, which is brought into a point of entry that is located in Wales and is not in the course of its consignment to an approved place of inspection in another UK territory.";

(b) in paragraph (1)—

(i) in the words before sub-paragraph (a), for "area of plant health control" substitute "point of entry, designated area of plant health control or approved place of inspection in Wales";

(ii) for sub-paragraph (a) substitute—

"(a) the material meets the prescribed requirements;";

(iii) omit sub-paragraphs (b) to (g);

(iv) in sub-paragraph (h), at the end insert "which accompanied the material on entry";

(v) in sub-paragraph (i), for the words from "phytosanitary", in the first place it occurs, to the end substitute "correct phytosanitary certificate";

(c) in paragraph (2), omit "to (g)";

(d) omit paragraphs (4) and (5);

(e) in paragraph (6)—

(i) in the words before sub-paragraph (a), for "area of plant health control" substitute "point of entry, designated area of plant health control or approved place of inspection";

(ii) in sub-paragraph (a), for "the date on which the certificate was delivered in accordance with article 9(1)" substitute "date it.";

(iii) omit sub-paragraph (b) and the preceding "; and";

(f) in paragraph (7), for "a plant health check" substitute "an examination under paragraph (2)";

(g) in paragraph (8)(b), for "has the same meaning as in Article 2(1)(o) of Directive 2000/29/EC" substitute "means a number of units of a single commodity, identifiable by its homogeneity of composition and origin, which form part of a consignment".

20. After article 12 insert—

"Requirements applicable to notified EU material

12A.—(1**)** This article applies to notified EU material which is brought into a point of entry that is located in Wales.

(2) An inspector must carry out an examination of—

(a) the phytosanitary certificate or phytosanitary certificate for re-export which accompanies a consignment of notified EU material to confirm that the consignment is accompanied by the correct phytosanitary certificate; and

(b) the trade documents that accompany the consignment to confirm that those documents correspond to the

description of the relevant material in the phytosanitary certificate or phytosanitary certificate for re-export."

21. In article 14(1), for "under customs supervision pursuant to Article 134 of the Customs Code" substitute "subject to the control of an officer of Revenue and Customs within the meaning of Schedule 1 to the Taxation (Cross-border Trade) Act 2018".

22. In article 15—

(a) in paragraph (1)—

(i) in sub-paragraph (b), omit "the responsible official body or";

(ii) in sub-paragraph (d), for "one of the official languages of the European Union", substitute "English";

(iii) omit sub-paragraph (e);

(iv) in sub-paragraph (f), for "Plant Protection Organisations of the Member States of the European Union", substitute "Plant Protection Organisation of the United Kingdom";

(b) in paragraph (2)—

(i) for the words from "or C of Schedule 4" to "Schedule", in the second place it occurs, substitute ", C or D of the list of regulated material, more than one set of entry requirements is specified in the corresponding entry in column 3 of Part A, C or D of that list";

(ii) for "requirement", in the second place it occurs, substitute "set of requirements";

(iii) omit the words from "by reference" to the end.

23. In article 16—

(a) in the heading, omit "EU transit goods or".

(b) for paragraph (1), substitute—

"(1) This article applies to notifiable relevant material, other than notified EU material, which is destined for an approved place of inspection." ;

(c) in paragraph (2)—

(i) in the words before sub-paragraph (a), for "any other place within the European Union, unless" substitute "an approved place of inspection in another UK territory unless it is accompanied by a copy of the phytosanitary certificate or phytosanitary certificate for re-export which accompanied the material on its entry into the United Kingdom and";

(ii) in sub-paragraph (b), at the beginning insert "where the material is destined for an approved place of inspection in Wales,";

(d) in paragraph (3)—

(i) in the words before sub-paragraph (a)—

(aa) for the words from "to which" to "Union," substitute "which is destined for an approved place of inspection in Wales";

(bb) for "five" substitute "three";

(ii) in sub-paragraph (a)—

(aa) omit "or designated area of plant health control";

(bb) omit the words from "or, if not" to the end;

(iii) in sub-paragraph (b), for the words "place referred to in sub-paragraph (a)" substitute "approved place of inspection";

(iv) omit sub-paragraphs (c) and (d);

(v) in sub-paragraph (f), for "article 7" substitute "the relevant Plant Health Order".

24. In article 17—

(a) in paragraph (1), for the words from "a place", in the first place it occurs, to the end, substitute "premises which are not located at a point of entry or are not part of a designated area of plant health control as a place at which appropriate checks may be carried out by an inspector in respect of notifiable relevant material, other than notified EU material";

(b) in paragraph (3), omit "or to EU transit goods,";

(c) in paragraph (4), for the words from "a place" to the end substitute "premises as an approved place of inspection in respect of notifiable relevant material, other than notified EU material, if the premises have been designated or approved by the Commissioners for Her Majesty's Revenue and Customs for that purpose";

(d) after paragraph (4) insert—

"(4A) In the case of any other premises, the Welsh Ministers may only approve those premises as an approved place of inspection for the purpose of carrying out appropriate checks in respect of EU transit material.

(4B) In this article, "appropriate checks", in relation to a consignment of relevant material, means—

(a) an examination of the phytosanitary certificate or phytosanitary certificate for re-export accompanying the consignment to determine whether it is the correct phytosanitary certificate;

(b) an examination of the consignment to determine whether it corresponds to its description in the trade documents that accompany it;

(c) an examination of the consignment and its packaging, and where necessary, the vehicle transporting the consignment to determine whether it meets the prescribed requirements.";

(e) omit paragraph (5), the heading to paragraph (6) and paragraph (6).

25. In Part 3, in the heading, omit "EU".

26. Omit articles 18 and 19.

27. In article 20—

(a) in paragraph 1, for sub-paragraphs (a) to (g), substitute—

"(a) any plant pest of a description specified in Part A, B or D of the list of prohibited plant pests;

(b) any relevant material of a description specified in column 2 of Part A, B or D of the list of prohibited infested material which is carrying or infected with a plant pest of a description specified in the corresponding entry in column 3;

(c) any plant pest which, although not specified in Part A, B or D of the list of prohibited plant pests, or in column 3 of Part A, B or D of the list of prohibited infested material, is not normally present in Great Britain and which is likely to be injurious to plants in Great Britain;

(d) any relevant material originating in a third country which is brought into Wales in contravention of article 5(1)(d) or (e);

(e) any relevant material of a description specified in column 2 of Part B or E of the list of regulated material which originates in the United Kingdom unless the requirements specified in the corresponding entries in respect of that

description of relevant material in column 3 are complied with;

(f) any relevant material originating in a third country and consigned from another part of the United Kingdom which, if it had been brought into a point of entry located in Wales, would have contravened article 5(1)(d) or (e)" ;

(b) after paragraph (1) insert—

"(1A) Paragraph 1B applies to pest free areas.

(1B) No person may knowingly keep, store, plant, sell or move or knowingly cause or permit to be kept, stored, planted, sold or moved—

(a) any plant pest of a description specified in column 2 of Part C of the list of prohibited plant pests which relates to a pest free area;

(b) in the case of any pest free area which is, or is included in, a UK pest free area specified in column 4 of Part C of the list of prohibited infested material, any relevant material of a description specified in the corresponding entry in column 2 of that Part which is carrying or infested with a plant pest of a description specified in the corresponding entry in column 3;

(c) any relevant material originating in a third country which is brought into a pest free area in contravention of article 5(1)(h);

(d) in the case of any pest free area which is, or is included in, a UK pest free area specified in column 4 of Part C of the list of regulated material, any relevant material of a description specified in the corresponding entry in column 2 of that Part which originates in the United Kingdom, unless the requirements specified in the corresponding entries in respect of that relevant material in column 3 are complied with;

(e) any relevant material originating in a third country and consigned from another part of the United Kingdom which, if it had been brought into a point of entry located in Wales, would have contravened article 5(1)(h).";

(c) in paragraph (2), for "paragraph (1)" substitute "paragraphs (1) and (1B)";

(d) in paragraph (3), for "(f)" substitute "(1B)(d)".

28. In article 21—

(a) in the heading, for "plant passports" substitute "UK plant passports";

(b) for paragraphs (1) to (6) substitute—

"(1) No person may move any of the following relevant material into or within Wales unless it is accompanied by a UK plant passport—

(a) any relevant material of a description specified in the list of controlled material which originates in the United Kingdom;

(b) any relevant material that has been discharged under article 12 and is of a description specified in the list of controlled material.

(2) No person may move any of the following relevant material into or within a pest free area unless it is accompanied by a UK plant passport which is valid for that pest free area or the UK pest free area of which it is part—

(a) any relevant material of a description, specified in the list of pest free area controlled material in respect of the relevant UK pest free area, which originates in the United Kingdom;

(b) any relevant material that has been discharged under article 12 and is of a description specified in the list of pest free area controlled material in respect of the relevant UK pest free area.

(3) No person may consign from Wales to another UK territory any of the following relevant material originating in Wales, unless it is accompanied by a UK plant passport—

(a) in the case of relevant material destined for Northern Ireland or England, any relevant material of a description specified in the list of controlled material;

(b) in the case of relevant material destined for a place in Northern Ireland or England which is within a UK pest free area, any relevant material of a description specified in the list of pest free area controlled material in respect of that UK pest free area;

(c) in the case of relevant material destined for Scotland, any relevant material of a description specified in Part A of Schedule 6 to the Plant Health (Scotland) Order 2005;

(d) in the case of relevant material destined for a place in Scotland which is within a UK pest free area, any relevant material of a description specified in Part B of Schedule 6 to the Plant Health (Scotland) Order 2005 in respect of that UK pest free area.

(4) In the case of any relevant material originating in a place of production in Wales, a UK plant passport may only be issued in respect of that material if the material has been subject to a satisfactory inspection at the place of production.";

(c) omit paragraphs (7) and (8);

(d) after paragraph (8) insert—

"(8A) The requirements in paragraphs (1)(b) and (2)(b) do not apply to any notified EU material moving from its point of entry to its first destination in the United Kingdom if it is accompanied by a copy of the phytosanitary certificate or phytosanitary certificate for re-export which accompanied the material on its entry into the United Kingdom.";

(e) in paragraph (9), for "(1), (2), (5) and (6)" substitute "(1)(a), (2)(a) and (3)";

(f) in paragraph (10), for "Paragraphs (2) and (4) are" substitute "Paragraph (2) is".

29. In article 22—

(a) in paragraph (1)—

(i) omit sub-paragraphs (a) and (b);

(ii) in sub-paragraph (c) for "(f)" substitute "(1B)(d)";

(iii) in sub-paragraph (d) for "(1), (2), (5) and (6)" substitute "(1)(a), (2)(a) and (3)(a) or (c)";

(b) omit paragraphs (3) and (4);

(c) in paragraph (5), for "(1) or (2)" substitute "(1)(a) or (2)(a)".

30. In article 23—

(a) in paragraph (1), for the words from "Part B" to the end substitute "the list of pest free area controlled material which relates to a pest free area and which is moved through the pest free area to a destination outside the relevant UK pest free area";

(b) in paragraph (2)—

(i) in the words before sub-paragraph (a), omit "and (4)";

(ii) in sub-paragraph (a) for "in Great Britain" substitute "outside the relevant UK pest free area";

(iii) at the end of sub-paragraph (a), for "or" substitute "and";

(iv) in sub-paragraph (b)—

(aa) for "Wales", in the first place it occurs, substitute "the pest free area";

(bb) for "Wales", in the second and third places it occurs, substitute "the relevant UK pest free area";

(c) in paragraph (3)—

(i) in sub-paragraph (a), omit "in relation to which Wales is a protected zone";

(ii) in sub-paragraph (b), for "Wales" substitute "the pest free area";

(d) at the end insert—

"(4) In this article—

(a) "relevant UK pest free area" (*"ardal berthnasol yn y DU sy'n rhydd rhag plâu"*), in relation to any relevant material of a description specified in the list of pest free area controlled material, means the pest free area which is, or is part of, the UK pest free area that has been designated in respect of that material;

(b) "relevant plant pest" (*"pla planhigion perthnasol"*), in relation to a UK pest free area, means the plant pest in respect of which the UK pest free area has been designated.".

31. In article 24—

(a) in the heading, for "plant passports" substitute "UK plant passports";

(b) in paragraphs (1) to (5), for "plant passport", in each place it occurs, substitute "UK plant passport";

(c) in paragraph (4)(b)—

(i) after "by a" insert "regulated";

(ii) omit the words from "of" to the end.

32. In Part 4, in the heading, for "plant passports" substitute "UK plant passports".

33. In article 25, omit paragraph (2).

34. In article 28—

(a) in paragraph (3)(c), for "details specified in Article 10(4) of Decision (EU) 2015/789" substitute "specified details";

(b) in paragraph (4)—

(i) before sub-paragraph (a) insert—

"(za) "demarcated area" (*"ardal sydd wedi ei darnodi"*) means an area demarcated under paragraph 5 of Schedule 15 to the Plant Health Regulations or, in relation to Scotland, under equivalent provisions in the Plant Health (Scotland) Order 2005 or the Plant Health (Forestry) Order 2005;";

(ii) in sub-paragraph (a), for "has the meaning given in Article 1(d) of Decision (EU) 2015/789" substitute "means any person who, in the course of a trade, business or profession, is involved in planting, breeding, producing, importing, marketing or distributing plants";

(iii) after sub-paragraph (a) insert—

"(ab) "specified details" (*"manylion a bennir"*), in relation to a lot, means its origin, consignor, consignee, place of destination, individual serial, week or batch number of the UK plant passport, identity and quantity;";

(iv) in sub-paragraph (b)—

(aa) for the words in paragraph (i) substitute "plants specified in paragraph 13 of Part E of the list of controlled material which have been grown for at least part of their life in, or have been moved through, a demarcated area";

(bb) in paragraph (ii), for the words from "an area" to the end substitute "a demarcated area".

35. In article 29—

(a) in the heading and paragraphs (1), (4), (5), (6) and (7), for "plant passports", in each place it occurs, substitute "UK plant passports";

(b) in paragraph (4)(a), for "relevant plant pests" substitute "regulated plant pests";

(c) in paragraph (6)(a), for "relevant plant pests" substitute "regulated plant pests";

(d) omit paragraph (8).

36. Omit Part 5.

37. In article 31—

(a) in paragraph (1)(c), after "issue" insert "UK";

(b) in paragraph (10), omit the words ", including representatives of the European Commission,".

38. After article 31 insert—

"Emergency measures

31A.—(1**)** Where a regulated plant pest is found to be present in Wales, the Welsh Ministers may by notice—

(a) demarcate an area in relation to that infestation for the purpose of eradicating or containing that plant pest; and

(b) specify the prohibitions and restrictions which are to apply in the demarcated area for that purpose.

(2) A notice under paragraph (1)—

(a) must be in writing;

(b) must describe the extent of the demarcated area;

(c) must specify the date on which any such prohibitions or restrictions are to commence;

(d) must be published in a manner appropriate to bring it to the attention of the public; and

(e) may be amended or revoked, in whole or in part, by further notice.".

39. In article 32—

(a) in paragraph (1), for "introduced" substitute "brought";

(b) in paragraph (2)(b), for "landing" substitute "arrival";

(c) in paragraph (3)—

(i) in sub-paragraph (a), for "landing" substitute "bringing in";

(ii) in sub-paragraph (b)—

(aa) for "the landing of any plant pest or relevant material is to be carried out" substitute "any plant pest or relevant material is to be brought in";

(bb) for "to landing" substitute "to its entry";

(d) in paragraph (7)—

(i) in sub-paragraph (a)—

(aa) for the words in paragraph (i) substitute "a regulated plant pest";

(bb) omit paragraph (iii) and the preceding "or";

(ii) in sub-paragraph (b)(ii), omit "or 18".

40. In article 33—

(a) in paragraph (5), omit ", including representatives of the European Commission,";

(b) for the words in paragraph (8)(a)(i), substitute "a regulated plant pest".

41. In article 37(5), omit ", including representatives of the European Commission,".

42. In article 39—

(a) in paragraph (1), after "other than" insert "a country or territory in the European Union or";

(b) in paragraph (2)—

(i) in sub-paragraph (a), after "programme in" insert "the United Kingdom,";

(ii) in sub-paragraph (b), for "Annex II to Directive 98/57/EC" substitute "EPPO PM 7/21";

(iii) in sub-paragraph (c), for "Annex I to Directive 93/85/EEC" substitute "EPPO PM 7/59";

(c) omit paragraph (4).

43. In article 40—

(a) in paragraph (1)—

(i) for "introduced" substitute "imported";

(ii) for the words from "Welsh Ministers—" to the end substitute "Welsh Ministers in exercise of any derogation permitted by Schedule 8 to the Plant Health Regulations";

(b) in paragraph (2), for "(1)(b)" substitute "(1)";

(c) omit paragraph (3).

44. In article 41—

(a) in the heading, omit the words "permitted by Directive 2008/61/EC";

(b) in paragraph (1)—

(i) in the words before sub-paragraph (a), for "introduction", in both places it occurs, substitute "importation";

(ii) in sub-paragraph (a), for "Article 1(2) of Directive 2008/61/EC", substitute "Part A of Schedule 16A";

(iii) in sub-paragraph (b), for "Annex I to that Directive", substitute "Part B of Schedule 16A";

(c) in paragraph (2)—

(i) in sub-paragraph (a), for "laid down in Article 2(2) of Directive 2008/61/EC",

substitute "specified in Part C of Schedule 16A";

(ii) in sub-paragraph (b), for the words from "specifying" to the end, substitute "as the Welsh Ministers may determine in relation to the licence quarantine measures that are appropriate in respect of those activities";

(d) in paragraph (4)—

(i) in the words before sub-paragraph (a), for "activities to which a licence granted under paragraph (1) relates" substitute "licensed activity";

(ii) in sub-paragraph (a), for "activities" substitute "licensed activity";

(iii) in sub-paragraph (b), for "the activities were" substitute "licensed activity was";

(e) in paragraph (5), for "the plant pests specified in Schedule 1 and in column 3 of Schedule 2" substitute "regulated plant pests";

(f) omit paragraph (6);

(g) for paragraph (7) substitute—

"(7) In this article—

(a) "appropriate quarantine measures" (*"mesurau cwarantin priodol"*) means—

(i) where applicable, quarantine measures which are equivalent to those specified in Part A of Annex 3 to Commission Directive 2008/61/EC establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes or for work on varietal selections(**1**);

(ii) in any other case, any quarantine measures, including testing, as may be specified by the Welsh Ministers;

(b) "licence quarantine measures" (*"mesurau cwarantin y drwydded"*) means the measures specified in Part D of Schedule 16A;

(**1**) OJ No. L 158, 18.6.2008, p. 41.

(c) "licensed activity" (*"gweithgaredd trwyddedig"*) means any activity for trial or scientific purposes or for work on varietal selections which is authorised by a single licence under paragraph (1).".

45. In article 42, in paragraph (3)—

(a) in sub-paragraph (a)—

(i) for the words in paragraph (i), substitute "is a regulated plant pest";

(ii) omit paragraph (ii);

(iii) in paragraph (iii), for "Schedule 2", in both places it occurs, substitute "the list of prohibited infested material";

(iv) in paragraph (iv), for "of a description specified in Schedule 1 or 2" substitute "a regulated plant pest";

(b) in sub-paragraph (b)(iii)—

(i) for "Schedule 2", in the first place it occurs, substitute "the list of prohibited infested material";

(ii) for "Schedule 2", in the second place it occurs, substitute "that list".

46. In article 43(3)(b)—

(a) for the words in paragraph (i) substitute "a regulated plant pest";

(b) in paragraph (ii), for "specified in Schedule 1 or 2" substitute "a regulated plant pest";

(c) in paragraph (iii)—

(i) for "Schedule 3" substitute "the list of prohibited material";

(ii) for "that Schedule" substitute "that list".

47. In article 44—

(a) in paragraph (3), after "certificate," insert "UK";

(b) in paragraph (4)(b)—

(i) for the words in paragraph (i) substitute "a regulated plant pest";

(ii) in paragraph (ii) for "specified in Schedule 1 or 2" substitute "a regulated plant pest".

48. In article 46—

(a) in paragraph (1)—

(i) after sub-paragraph (a)(i), insert—

"(ia)article 6A;";

(ii) in sub-paragraph (b), after "person" insert ", a prohibition or restriction in a notice issued by the Welsh Ministers";

(b) in paragraph (2), for “plant passport”, in both places it occurs, substitute “UK plant passport”;

(c) in paragraph (3), for “plant passport”, in each place it occurs, substitute “UK plant passport”.

49. After article 49 insert—

“Transitional provision: UK plant passports

49A.—(1**)** An authorisation to issue plant passports which has been granted and has effect immediately before exit day continues to apply after exit day as if it were an authorisation to issue UK plant passports.

(2) In the case of any plant passport that has been issued in respect of any relevant material before exit day for the purposes of the movement of that material which takes place before and after exit day, the plant passport is to be treated as if it were a UK plant passport and references to a UK plant passport are to be construed accordingly.”.

50. Omit Schedules 1 to 8.

51. In Schedule 9—

(a) in the heading to Schedule 9, for “plant passports” substitute “UK plant passports”;

(b) in Part A, in the heading—

(i) for “plant passports” substitute “UK plant passports”;

(ii) for “for any relevant material in Schedule 6 or 7” substitute “in relation to relevant material”;

(c) in paragraphs 1 to 3, for “plant passport”, in each place it occurs, substitute “UK plant passport”;

(d) in paragraph 4—

(i) in the words before sub-paragraph (a), for “plant passport” substitute “UK plant passport”;

(ii) in sub-paragraph (a), for “EU-plant” substitute “UK plant”;

(iii) omit sub-paragraph (b);

(iv) in sub-paragraph (c), for the words from “responsible” to the end substitute “appropriate UK plant health authority”;

(v) in sub-paragraph (d) for “plant passport”, in both places it occurs, substitute “UK plant passport”;

(vi) in sub-paragraphs (e), (f), and (g), for "plant passport", in each place it occurs, substitute "UK plant passport";

(vii) in sub-paragraph (h)—

(aa) for "protected zone", in both places it occurs, substitute "UK pest free area";

(bb) for "ZP" substitute "PFA";

(viii) in sub-paragraph (j), for "Wales" substitute "the United Kingdom";

(e) in paragraph 5(c)(ii)—

(i) for "European Union", in the first place it occurs, substitute "United Kingdom";

(ii) for the words "responsible" to the end substitute "appropriate UK plant health authority";

(f) in paragraph 6(1)(a), for the words from "at" to the end substitute "English and may also be given in Welsh";

(g) in paragraph 7, for "plant passport" substitute "UK plant passport";

(h) in paragraph 8, for sub-paragraphs (a) to (c) substitute—

"(a) in relation to vegetable plant material—

(i) produced in Great Britain, in Part B of Schedule 2 to the Marketing of Vegetable Plant Material Regulations 1995(**1**);

(ii) produced in Northern Ireland, in Part B of Schedule 2 to the Marketing of Vegetable Plant Material Regulations (Northern Ireland) 1995(**2**);

(b) in relation to ornamental plant propagating material—

(i) produced in England or Wales, in the Schedule to the Marketing of Ornamental Plant Propagating Material Regulations 1999(**3**);

(ii) produced in Scotland, in Schedule 1 to the Marketing of Ornamental Plant Propagating Material Regulations 1999(**4**);

(**1**) S.I. 1995/2652, to which there are amendments not relevant to these Regulations.

(**2**) S.R. 1995 No. 415, to which there are amendments not relevant to these Regulations.

(**3**) S.I. 1999/1801, to which there are amendments not relevant to these Regulations.

(**4**) S.I. 1999/1801, amended by S.S.I. 2018/284; there are other amending instruments but none is relevant.

(iii) produced in Northern Ireland, in the Schedule to the Marketing of Ornamental Plant Propagating Material Regulations (Northern Ireland) 1999(**1**);"

(i) in Part B, in the heading—

(i) for "plant passports" substitute "UK plant passports";

(ii) omit "in Schedule 6 or 7";

(j) in paragraph 9, for "plant passport", in both places it occurs, substitute "UK plant passport";

(k) in paragraph 10—

(i) in sub-paragraph (a), for "in Article 13(1)(a) of Council Directive 2002/56/EC on the marketing of seed potatoes" substitute—

"—

(i) in the case of seed potatoes produced in Wales, in Part 1 of Schedule 2 to the Seed Potatoes (Wales) Regulations 2016(**2**);

(ii) in the case of seed potatoes produced in England, in Part 1 of Schedule 2 to the Seed Potatoes (England) Regulations 2015(**3**);

(iii) in the case of seed potatoes produced in Scotland, in Part 1 of Schedule 5 to the Seed Potatoes (Scotland) Regulations 2015(**4**);

(iv) in the case of seed potatoes produced in Northern Ireland, in Part 1 of Schedule 2 to the Seed Potatoes Regulations (Northern Ireland) 2016(**5**)";

(ii) in sub-paragraph (b), for "EU-plant" substitute "UK plant";

(iii) in sub-paragraph (c)—

(aa) for "European Union" substitute "United Kingdom";

(bb) for "in item 18.1 of Section II of Annex IV Part A" substitute "specified in item 5 of Part B of the list of regulated material";

(l) omit paragraphs 11 and 12;

(**1**) S.R. 1999 No. 502, to which there are amendments not relevant to these Regulations.
(**2**) S.I. 2016/106 (W.52), amended by S.I. 2017/596 (W.139).
(**3**) S.I. 2015/1953, amended by S.I. 2017/288.
(**4**) S.S.I. 2015/395, as amended by S.S.I. 2016/434.
(**5**) S.R. 2016 No. 190, as amended by S.R. 2017 No. 155.

(m) in paragraph 13—

(i) in sub-paragraph (a), for "in Article 10(1)(a) of Council Directive 66/401/EEC on the marketing of fodder plant seed" substitute—

"—

(i) in the case of seeds produced in Wales, in Parts 2 and 3 of Schedule 3 to the Seed Marketing (Wales) Regulations 2012(**1**);

(ii) in the case of seeds produced in England, in Parts 2 and 3 of Schedule 3 to the Seed Marketing Regulations 2011(**2**);

(iii) in the case of seeds produced in Scotland, in Part 2 of Schedule 6 to the Oil and Fibre Plant Seed (Scotland) Regulations 2004(**3**);

(iv) in the case of seeds produced in Northern Ireland, in Parts 2 and 3 of Schedule 3 to the Seed Marketing Regulations (Northern Ireland) 2016(**4**);";

(ii) in sub-paragraph (b), for "EU-plant" substitute "UK plant";

(iii) in sub-paragraph (c)—

(aa) for "European Union" substitute "United Kingdom";

(bb) for "in items 28.1 and 28.2 of Section II of Annex IV Part A" substitute "specified in items 21 and 22 of Part B of the list of regulated material".

52. Omit Schedule 12.

53. In Schedule 14(**5**)—

(a) in paragraph 2—

(i) at the appropriate places insert—

""EPPO PM 7/40" means the standard describing a diagnostic protocol for *Globodera rostochiensis* and *Globodera pallida* approved by the European and Mediterranean Plant Protection Organization(**6**);

(**1**) S.I. 2012/245 (W.39).
(**2**) S.I. 2011/463; relevant amending instruments are S.I. 2011/2992, 2012/3055.
(**3**) S.S.I. 2004/317; relevant amending instruments are S.S.I. 2009/223, 2016/434, 2016/68.
(**4**) S.R. 2016 No. 244.
(**5**) As amended by Part 2 of these Regulations.
(**6**) First approved by the European and Mediterranean Plant Protection Organization in September 2003 and available

"EPPO PM 7/119" means the standard describing the procedures for nematode extraction approved by the European and Mediterranean Plant Protection Organization(**1**);

"specified measures" (*"mesurau penodedig"*) means—

(a) for the purposes of paragraph 2C, the official re-sampling of the field and official testing of the samples, carried out at least three years after appropriate officially approved control measures have been taken in the field or, in any other case, at least five years after the year in which the Potato cyst nematodes were found or potatoes were last grown in the field;

(b) for the purposes of paragraph 7 and 11—

(i) the disinfestation of the bulbs or plants by appropriate methods that ensures that there is no identifiable risk of Potato cyst nematodes spreading;

(ii) the removal of soil from the bulbs or plants by washing or brushing them until they are practically free of soil, so as to ensure that there is no identifiable risk of Potato cyst nematodes spreading;"

(ii) in the definition of "field", for "Article 3 of Directive 2007/33/EC" substitute "this Schedule";

(b) after paragraph 2 insert—

"**2ZA.** Any official testing of samples for the purposes of this Schedule must be carried out in accordance with EPP0 PM 7/40 and EPPO PM 7/119.".

(c) in paragraph 2A—

(i) in sub-paragraph (a), for "Articles 4 and 5 of Directive 2007/33/EC" substitute "this Part";

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from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics.

(**1**) First approved by the European and Mediterranean Plant Protection Organization in September 2013 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics.

(ii) in sub-paragraph (b), for "Article 6 of Directive 2007/33/EC" substitute "this Part";

(d) after paragraph 2A insert—

"**2AA.** An official investigation of a field for the purposes of paragraph 2A(a) must be carried out—

(a) prior to the proposed planting or storing; and

(b) unless there is documentary evidence of a previous official investigation confirming that no Potato cyst nematodes were found during the investigation and that potatoes or host plants were not present at the time of that investigation and have not been grown in the field since that investigation, between the harvesting of the last crop in the field and the proposed planting of seed potatoes or other susceptible material.

2AB. In the case of a field in which seed potatoes or host plants intended for the production of plants for planting are to be planted or stored, an official investigation for the purposes of paragraph 2A(a) must include soil sampling of the field at the appropriate soil sampling rate and official testing of the samples.

2AC. In the case of a field in which susceptible bulbs or susceptible plants, intended for the production of plants for planting, are to be planted or stored, an official investigation for the purposes of paragraph 2A(a) must include—

(a) soil sampling of the field at the appropriate sampling rate and official testing of the samples; or

(b) verification, based on the results of appropriate officially approved testing, that Potato cyst nematodes have not been present in the field during the previous 12 years or verification, based on the known cropping history of the field, that no potatoes or host plants have been grown in the field in the previous 12 years.

2AD. An official survey for the purposes of paragraph 2A(b) must include soil sampling of the field at the appropriate sampling rate on at least 0.5% of the acreage used for the production of potatoes in the relevant year and official testing of the samples.

2AE. Paragraph 2A(a) does not apply where the Welsh Ministers have established that there is no risk of Potato cyst nematodes spreading and—

(a) any susceptible material intended for the production of plants for planting is to be used within the same place of production which is situated within an officially defined area;

(b) seed potatoes are to be used within the same place of production which is situated within an officially defined area; or

(c) in the case of any susceptible bulbs or susceptible plants intended for the production of plants for planting, the harvested plants are to be subject to officially approved measures.

2AF. For the purposes of paragraphs 2AB to 2AD—

(a) "the appropriate sampling rate", in relation to a field, is the minimum sampling rate specified in the following table—

Paragraph	*Field*	*Rate*	
2AB and 2AC	Field ≤ 8 hectares	1,500 ml of soil per hectare collected from at least 100 cores/hectare	
	Field > 8 hectares	First 8 hectares	1,500 ml of soil per hectare
		Each additional hectare	400 ml of soil per hectare
	Field ≤ 4 hectares that meets one criterion in paragraph (b)	400 ml of soil per hectare	
	Field > 4 hectares that meets one criterion in paragraph (b)	First 4 hectares	400 ml of soil per hectare
		Each additional hectare	200 ml of soil per hectare
2AD	Field ≤ 4 hectares	Any of the following:	
		—400 ml of soil per hectare	
		—targeted sampling of at least 400 ml of soil following the visual examination of roots with visual symptoms; or	
		—where the harvested potatoes can be traced to the field in which they were grown, 400 ml of soil associated with the harvested potatoes	

(b) the criteria are—

(i) documentary evidence exists to show that potatoes or host plants have not been grown or were not present in the field in the six years prior to the official investigation;

(ii) no Potato cyst nematodes have been found during the last two successive official investigations in samples of 1,500 ml soil/hectare and no potatoes or host plants, other than those for which the official investigation is required, have been grown in the field since the first of those two investigations;

(iii) no Potato cyst nematodes or Potato cyst nematodes without live content have been found in the last official investigation which consisted of a sample size of at least 1,500 ml soil/hectare and no potatoes or host plants, other than those for which the official investigation is required, have been grown in the field since the last official investigation.";

(e) in paragraph 2C—

(i) for "officially approved" substitute "relevant specified";

(ii) omit "set out in Section 3(C) of Annex 3 to Directive 2007/33/EC";

(f) in paragraph 7, for "the measures set out in Section III(A) of Annex III to Directive 2007/33/EC" substitute "one of the relevant specified measures";

(g) in paragraph 11, for "the measures set out in Section 3(A) of Annex 3 to Directive 2007/33/EC" substitute "one of the relevant specified measures".

54. In Schedule 15—

(a) in paragraph 1—

(i) in the definition of "contaminated", for "for the purposes of Article 5(1)(a) of Directive 93/85/EEC" substitute "pursuant to paragraph 1D(a)";

(ii) in the definition of "first growing year", for "for the purposes of Article 5(1)(a) of Directive 93/85/EEC" substitute "pursuant to paragraph 1D(a)";

(iii) in the definition of "possibly contaminated", for "for the purposes of

Article 5(1)(b) of Directive 93/85/EEC" substitute "pursuant to paragraph 1D(b)";

(b) in paragraph 1A, omit "in accordance with Article 2(1) of Directive 93/85/EEC";

(c) after paragraph 1A insert—

"**1AA.** In the case of tubers of *Solanum tuberosum* L., those surveys must include official testing of samples of seed and other potatoes in accordance with EPPO PM 7/59.

1AB. In the case of plants of *Solanum tuberosum* L., those surveys must be carried out according to appropriate methods and include appropriate official testing of samples.

1AC. The collection of samples for the purposes of paragraphs 1AA and 1AB must be based on sound scientific and statistical principles and the biology of Potato ring rot and take into account relevant potato production systems.";

(d) in paragraph 1B(a), for the words from "Annex 1" to "Directive 93/85/EEC", in the second place it occurs, substitute "EPPO PM 7/59";

(e) in paragraph 1D—

(i) in sub-paragraph (b), for "taking into account the provisions in point 1 of Annex 3 to Directive 93/85/EEC" substitute—

"having regard to the following factors—

(i) the susceptible material grown at the contaminated place of production;

(ii) the places of production with some production link to that susceptible material, including those sharing production equipment and facilities directly or through a common contractor;

(iii) the production or presence of other susceptible material at the contaminated place of production;

(iv) the premises handling potatoes from the contaminated place of production and the places of production mentioned in paragraph (ii);

(v) any object that may have come into contact with the contaminated susceptible material;

(vi) any susceptible material stored in, or in contact with, any object prior to its disinfection;

(vii) the susceptible material with a sister or parental clonal relationship to the contaminated susceptible material and the places of production of that susceptible material";

(ii) in sub-paragraph (c), for "provisions in point 2 of Annex 3 to Directive 93/85/EEC" substitute "proximity of other places of production growing potatoes or other host plants and the common production and use of seed potato stocks";

(f) after paragraph 1D insert—

"**1DA.** When making a designation or determination under paragraph 1D, an inspector must have regard to sound scientific principles, the biology of Potato ring rot and relevant production, marketing and processing systems.";

(g) in paragraph 3—

(i) in sub-paragraph (a), for "any other measure that complies with point 1 of Annex IV to Directive 93/85/EEC" substitute "an officially approved disposal method that ensures that there is no identifiable risk of Potato ring rot spreading";

(ii) in sub-paragraph (b), for "in accordance with point 2 of Annex IV to Directive 93/85/EEC" substitute "in a manner that ensures that there is no identifiable risk of Potato ring rot spreading";

(h) in paragraph 4, for "Directive 93/85/EEC" substitute "this Schedule";

(i) in paragraph 6(c), for "Annex 1 to Directive 93/85/EEC" substitute "EPPO PM 7/59";

(j) in paragraph 7(c), for "Annex 1 to Directive 93/85/EEC" substitute "EPPO PM 7/59";

(k) in paragraph 8(d), for "Annex 1 to Directive 93/85/EEC" substitute "EPPO PM 7/59";

(l) in paragraph 10A, for "Article 2 of Directive 93/85/EEC" substitute "EPPO PM 7/59";

(m) in paragraph 20(b), for "Article 2 of Directive 93/85/EEC" substitute "EPPO PM 7/59".

55. In Schedule 16—

(a) in paragraph 1—

(i) in the definition of "contaminated", for "for the purposes of Article 5(1)(a)(ii) of

Directive 98/57/EC" substitute "pursuant to paragraph 1E(c)";

(ii) in the definition of "first growing year", for "for the purposes of Article 5(1)(a)(ii) of Directive 98/57/EC" substitute "pursuant to paragraph 1E(c)";

(iii) in the definition of "possibly contaminated" for "for the purposes of Article 5(1)(a)(iii) or (c)(iii) of Directive 98/57/EC" substitute "pursuant to paragraph 1E(d)";

(b) in paragraph 1A, omit "in accordance with Article 2 of Directive 98/57/EC";

(c) after paragraph 1A insert—

"**1AA.** Those surveys must be based on a risk assessment to identify other possible sources of contamination threatening the production of susceptible material and include targeted official surveys in production areas, based on the relevant risk assessment, to identify the presence of Potato brown rot on—

(a) relevant material, other than susceptible material;

(b) surface water which is used for irrigation or spraying of susceptible material; and

(c) liquid waste discharged from industrial processing or packaging premises handling susceptible material.

1AB. Those surveys must also be based on the biology of Potato brown rot and the relevant production systems and must include—

(a) in the case of susceptible material comprising plants of *Solanum tuberosum* L., visual inspection of the growing crop, at appropriate times, or the sampling of both seed and other potatoes in the growing season or in store, which must include official visual inspection by cutting of tubers;

(b) in the case of seed potatoes and, where appropriate, other potatoes, official testing of samples using the method set out in EPPO PM 7/21;

(c) in the case of susceptible material comprising plants of *Solanum lycopersicum* L., visual inspection, at appropriate times, of at least the growing crop of plants intended for replanting for professional use;

(d) for host plants, other than susceptible material, and for water including liquid waste, official testing.

1AC. The collection of samples for the purposes of paragraph 1AB must be based on sound scientific and statistical principles and the biology of Potato brown rot and take into account relevant potato production systems of susceptible material and other host plants of Potato brown rot.";

(d) in paragraph 1B(a)(i), for the words from "Annex 2" to the end substitute "EPPO PM 7/21";

(e) in paragraph 1B(b), for the words from "specified" to "Directive 98/57/EC" substitute "referred to in EPPO PM 7/21";

(f) in paragraph 1E—

(i) in sub-paragraph (a), for "in accordance with Annex 4 to Directive 98/57/EC" substitute—

"which includes investigation of the following—

(i) potatoes which are growing or have been harvested that are clonally related to any contaminated potatoes;

(ii) tomatoes which are growing or have been harvested that are from the same source as any contaminated tomatoes;

(iii) potatoes or tomatoes which are growing or have been harvested that are under official control and are suspected to be contaminated with Potato brown rot;

(iv) potatoes which are growing or have been harvested that are clonally related to any potatoes that have been grown at the contaminated place of production;

(v) potatoes or tomatoes which are growing nearby the contaminated place of production, including those sharing production equipment and facilities directly or through a common contractor;

(vi) surface water used for irrigation and spraying from any source confirmed or suspected to be contaminated with Potato brown rot;

(vii) surface water used for irrigation and spraying from a source used in

common with the contaminated and possibly contaminated places of production;

(viii) places of production which are flooded or have been flooded with contaminated or possibly contaminated surface water;

(ix) surface water used for irrigation or spraying of the contaminated place of production or flooded fields at the contaminated place of production";

(ii) in sub-paragraph (e), for "in accordance with point 2(i) of Annex 5 to Directive 98/57/EC" substitute "having regard to the relevant factors";

(g) in paragraph 1F—

(i) in sub-paragraph (a), for "in accordance with Annex 4 to Directive 98/57/EC" substitute "which includes investigation of the things referred to in paragraph 1E(a)(i) to (ix)";

(ii) in sub-paragraph (d), for "in accordance with point 2(i) of Annex 5 to Directive 98/57/EC" substitute "having regard to the relevant factors";

(h) in paragraph 1G(d), for "in accordance with point 2(ii) of Annex 5 to Directive 98/57/EC" substitute "having regard to the relevant factors";

(i) after paragraph 1G insert—

"**1H.** The "relevant factors" are—

(a) for the purposes of paragraphs 1E and 1F—

(i) the proximity of other places of production growing susceptible material;

(ii) the common production and use of seed potato stocks;

(iii) places of production using surface water for irrigation or spraying of susceptible material where there is or has been a risk of surface water run-off from the contaminated place of production;

(b) for the purposes of paragraph 1G—

(i) places of production producing susceptible material adjacent to, or which are at risk from flooding by, contaminated surface water;

(ii) any discrete irrigation basin associated with the contaminated surface water;

(iii) water bodies connected with the contaminated surface water having regard to the direction and rate of flow of the contaminated surface water and the presence of wild solanaceous host plants.";

(j) in paragraph 3—

(i) in sub-paragraph (a), for "any measure that complies with point 1 of Annex VI to Directive 98/57/EC" substitute "an officially approved disposal method that ensures that there is no identifiable risk of Potato Brown rot spreading";

(ii) in sub-paragraph (b), for "in accordance with point 2 of Annex VI to Directive 98/57/EC" substitute "by an officially approved disposal method that ensures that there is no identifiable risk of Potato Brown rot spreading";

(k) in paragraph 4, for "Directive 98/57/EC" substitute "this Schedule";

(l) in paragraph 6(c), for "Annex 2 to Directive 98/57/EC" substitute "EPPO PM 7/21";

(m) in paragraph 7(b)(iii), for "Annex 2 to Directive 98/57/EC" substitute "EPPO PM 7/21";

(n) in paragraph 8(g), for "Annex 2 to Directive 98/57/EC" substitute "EPPO PM 7/21";

(o) in paragraph 20—

(i) in sub-paragraph (a), for "Article 5(1)(a)(iv) of Directive 98/57/EC" substitute "paragraph 1E(e)";

(ii) in sub-paragraph (b), for "Article 5(1)(c)(iii) of Directive 98/57/EC" substitute "paragraph 1G(d)";

(p) in paragraph 21(b), for "Article 2 of Directive 98/57/EC" substitute "EPPO PM 7/21".

56. After Schedule 16, insert—

"SCHEDULE 16A Article 41

Licences for trial or scientific purposes or for work on varietal selections

1. In this Schedule, "specified activity" (*"gweithgaredd penodedig"*) means any activity

for trial or scientific purposes or for work on varietal selection.

PART A

Information to be included in an application for a scientific licence

2. The name and address of the person responsible for the proposed specified activity.

3. The following details in relation to the relevant material and plant pests to be used in the specified activity—

(a) their scientific name or names;

(b) the type of relevant material;

(c) the quantity of relevant material;

(d) the place of origin of the relevant material;

(e) the place at which the relevant material is to be first stored or planted after its official release (where relevant);

(f) the proposed method of destruction or treatment of the relevant material on completion of the specified activity (where relevant);

(g) in the case of any relevant material or plant pest which is to be imported from a third country, its proposed point of entry into the United Kingdom.

4. In the case of any relevant material to be used in the specified activity, appropriate documentary evidence to confirm its place of origin.

5. The duration, nature and objectives of the proposed specified activity, including a summary and a specification of the work to be conducted.

6. The address and description of the specific site or sites at which the proposed specified activity is to be carried out.

PART B

General conditions to be met in relation to an application for a scientific licence

7. The nature and objectives of the specified activity comply with the concept of trial or scientific purposes or for work on varietal selections.

8. The premises and the facilities at the site or sites at which the specified activity is to be carried out meet any relevant quarantine containment conditions.

9. The personnel carrying out the specified activity have appropriate scientific and technical qualifications.

PART C

Licence conditions relating to any plant pest or relevant material to be used in a specified activity

10. For the purposes of article 41(2)(a), the conditions are—

(a) in the case of any relevant material, the relevant material is accompanied on its entry into the United Kingdom by a letter of authority which has been issued by the relevant national plant protection organisation on the basis of appropriate documentary evidence as regards the place of origin of the material;

(b) in the case of any relevant material of a description specified in Schedule 5 to the Plant Health Regulations, the relevant material is accompanied, wherever possible, by a phytosanitary certificate issued in the country of origin which—

(i) confirms that the material is free from any regulated plant pest, other than any plant pest whose importation is authorised by the licence;

(ii) includes the statement under the heading ‘Additional declaration’, ‘This material is imported under Article 41 of the Plant Health (Wales) Order 2018’; and

(iii) includes the name of any authorised plant pest;

(c) the relevant material is held under quarantine containment conditions and on arrival is directly and immediately moved to the site or sites specified in the licence.

PART D

Licence quarantine measures

11. The licence quarantine measures are—

(a) in the case of the premises, facilities and working procedures which relate to the specified activity:

(i) the physical isolation of any plant pests or relevant material being used in the specified activity from all other plant pests and relevant material, including the control of vegetation in surrounding areas, where appropriate;

(ii) the designation of a contact person responsible for the specified activity;

(iii) the implementation of restrictions on access to the premises and facilities being used in relation to the specified activity and, where appropriate, to the area surrounding those premises and facilities, to named personnel only;

(iv) the appropriate identification of the premises and facilities being used, indicating the type of activities and the personnel responsible;

(v) the maintenance of a register of the activities performed and a manual of operating procedures, including procedures in the event of an escape of plant pests from containment;

(vi) the maintenance of appropriate security and alarm systems;

(vii) the implementation of—

(aa) appropriate control measures to prevent the introduction into and the spread of plant pests within the premises being used;

(bb) controlled procedures for sampling, and for the transfer of the material between the premises and facilities being used;

(cc) controls for the disposal of waste, soil and water, as appropriate;

(dd) appropriate hygiene and disinfection procedures and

facilities for personnel, structures and equipment;

(ee) appropriate measures and facilities for the disposal of experimental material; and

(ff) appropriate indexing (including testing) facilities and procedures; and

(b) other appropriate quarantine measures according to the specific biology and epidemiology of the type of material involved and the activities approved, including—

(i) the maintenance of facilities accessible to authorised personnel via a separate room with two interlocking doors;

(ii) the maintenance of facilities under negative air pressure,

(iii) the use of escape-proof containers with appropriate mesh size and other barriers;

(iv) the maintenance of the material in isolation from other plant pests and material;

(v) the maintenance of any material for breeding in breeding cages with manipulation devices;

(vi) the prohibition on any interbreeding of the plant pest with indigenous strains or species;

(vii) the implementation of controls on the continuous culture of the plant pest;

(viii) the maintenance of the plant pest under conditions that strictly control the multiplication of the plant pest;

(ix) the implementation of procedures to check the purity of cultures of the plant pest for freedom from parasites and other plant pests;

(x) the implementation of appropriate control programmes in respect of the material to eliminate possible vectors;

(xi) in the case of *in vitro* activities, the implementation of controls on the handling of the material under sterile conditions;

(xii) the maintenance of the plant pest in conditions to ensure that it cannot spread via any vector; and

(xiii) the seasonal isolation of the material to ensure that the activities are done during periods of low plant health risk.".

PART 4

Amendment of the Plant Health etc. (Fees) (Wales) Regulations 2018: exiting the European Union

57. The Plant Health etc. (Fees) (Wales) Regulations 2018(**1**) are amended as follows.

58. In regulation 3—

(a) in paragraph (1), for "to the 2018 Order" substitute "or Schedule 7 to the Plant Health (EU Exit) Regulations 2019";

(b) after paragraph (2) insert—

"(2A) Paragraph 2(b) to (d) do not apply to a consignment originating in the European Union or Switzerland.".

(c) in paragraph (3)(b), for "introduced into Wales from a third country" substitute—

"—

(i) brought into a point of entry that is located in Wales and is not destined for an approved place of inspection in another UK territory; or

(ii) brought into a point of entry that is located in another UK territory and is destined for an approved place of inspection in Wales";

(d) after paragraph (3), insert—

"(4) Words and expressions which are not defined in this regulation and appear in the 2018 Order have the same meaning in this regulation as they have in the 2018 Order.";

59. In regulation 4(6)(a), after "issue" insert "UK".

60. In regulation 6—

(a) in paragraph (1), for "paragraph 5 of the Annex to the Decision" substitute "item 7 of Part D of Schedule 4 to the Plant Health (EU Exit) Regulations 2019";

(**1**) S.I. 2018/1179 (W. 238).

(b) omit paragraph (2).

61. Omit regulation 7.

62. In regulation 8, in paragraphs (3) and (6), for "Union" substitute "UK".

63. In Schedule 5, in column 1 of the table, for "Union", in each place it occurs, substitute "UK".

PART 5

Revocation

64. The Potatoes Originating in Egypt (Wales) Regulations 2004(**1**) are revoked.

Name
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers
Date

(**1**) S.I. 2004/2245 (W. 209) as amended by S.I. 2014/1463 (W. 144).

Explanatory Memorandum to Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

I am satisfied that the benefits justify the likely costs.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
20 February 2019

PART 1

1. Description

1.1 The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 ('the Regulations') correct deficiencies in domestic legislation which implements EU Directive 2000/29/EC on measures to protect plant health arising in consequence of the UKs withdrawal from the EU in a 'no deal' scenario. The Regulations also transpose provisions in certain Council Directives in relation to the planting of certain *solanaceous* species and the control of relevant plant pests.

1.2 Parts of the Regulations come into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ('the 2018 Act') defines as 29 March 2019 at 11.00pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 In accordance with paragraph 1(8) of Schedule 7 to the 2018 Act the Regulations are subject to the affirmative procedure as they create a criminal offence and relate to a fee in respect of a function exercisable by a public authority in the UK. The Regulations are also subject to the affirmative procedure in accordance with paragraph 2(2) of the European Communities Act 1972.

3. Legislative background

3.1 The Regulations are being made in exercise of the power in Part 1 of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the European Union. The Regulations are also made in exercise of the power in paragraph 21 of Schedule 7 to the 2018 Act. In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

3.2 Alongside the 2018 Act powers the Regulations are also made in exercise of powers conferred by the European Communities Act 1972. The Welsh Ministers are designated by the European Communities (Designation) (No 5) Order 2010 for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU ("the Plant Health Directive") establishes the EU plant health regime. Whilst protecting against plant health risks, the Plant Health Directive also provides for the trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material.

4.2 Part of the Plant Health Directive is implemented in Wales by the Plant Health (Wales) Order 2018 (S.I. 2018/1064) (W.223). The Order sets out obligations for the control and management of plant health risks from the import of plant material from third countries and the movement of such material within the EU single market, in order to protect biosecurity and the value of plant material to the economy and society. Similar but separate legislation operates in Scotland, England and Northern Ireland.

Why is it being changed?

4.3 Under the EU single market, plant material may move freely between and within member states and between member states and Switzerland. Material which hosts the most serious pests and diseases requires an EU plant passport to facilitate its movement. The Regulations introduce changes in relation to the import of plant material from EU member states and Switzerland and the movement of such material within Wales, to ensure that the current legislation continues to operate effectively after the UK has left the EU in the event of a 'no deal' scenario.

4.4 The Regulations also make consequential minor amendments to the existing fees set out in the Plant Health etc. (Fees) (Wales) Regulations 2018 (S.I. 2018/1179) (W.238) to remove inappropriate references to EU legislation and ensure legal operability post-exit.

What will it now do?

4.5 The Regulations will ensure that plant health legislation in Wales, which implements current EU protective measures against the introduction and spread of organisms harmful to plants or plant products, remains effective after the UK leaves the EU in a 'no deal' scenario.

4.6 Plants and plant products currently managed under the EU plant passport regime when moving to Wales from EU member states and Switzerland ("the EU member states") will be subject to import controls which will replace the assurance and traceability which the EU plant passport regime offers, maintaining biosecurity and border flow whilst minimising the impact on businesses. Consignments of these plants and plant products entering the UK will require a phytosanitary certificate issued in the country of export in accordance with International Plant Protection Convention obligations. However, in order to maintain the flow of goods, consignments of plants and plant products from EU member

states will not be stopped at the border. The relevant UK plant health authority will carry out documentary and identity checks for those consignments remotely, thereby ensuring future traceability of the material should that need arise. Recognising that biosecurity risks associated with EU goods do not change immediately on EU exit, physical checks will not be carried out on material imported from EU member states.

4.7 Under the Plant Health Directive checks on material imported from third countries are normally carried out at the first point of entry into the EU, so material arriving in Wales from a third country via the EU will already have been subject to the required plant health checks. Following the UK's exit from the EU consignments transiting the EU on their way to Wales will not be checked when they enter the EU and so will require checking on arrival in Wales. Some consignments arrive via fast moving roll-on, roll-off (Ro-Ro) ports, where stopping goods for checks at the border would create significant disruptions to the flow of traffic. Therefore, in order to ensure frictionless trade, businesses wishing to bring third country regulated goods into Wales via the EU at Ro-Ro ports will be required to facilitate plant health checks inland at their own premises. Premises will need to be authorised by the Welsh Government and provide specified inspection facilities. They will need to pre-notify arrival of such consignments to the Welsh Government and specify where the consignment will be held awaiting checks. The consignments will not be permitted to be moved from the authorised premises until the plant health authority has carried out the necessary checks.

4.8 The amendments outlined in paragraphs 4.6 and 4.7 are covered in Part 3, regulations 10 to 24 of the Regulations.

4.9 These amendments include a new offence in relation to the new import requirements described in paragraph 4.7 to provide the ability to enforce and prosecute serious cases of non-compliance.

4.10 In order to facilitate the monitoring of plant material moving within the UK, a system of UK plant passports is to be introduced to replace the EU plant passports required for the movement of material between and within member states under the EU single market.

4.11 A new criminal offence is also added to enforce any failure to comply with any requirement in a general notice issued under the Plant Health (Wales) Order 2018 in respect of a demarcated area. The provisions in EU emergency plant health decisions, which require demarcated areas to be established in the event of an outbreak, will be retained direct EU legislation. The EU decisions will require the Welsh Ministers to demarcate areas around a pest outbreak and take measures to eradicate and contain the outbreak. It has not been necessary for any demarcated areas to be established in the UK under any of the EU decisions to date, but the new powers to issue general notices in respect of any demarcated area that is established under these provisions will

ensure that the Welsh Ministers are able to meet their obligations under this retained direct EU legislation.

4.12 Regulations 57 to 63 (Part 4) of the Regulations also make consequential minor amendments to the existing fees set out in the Plant Health etc. (Fees) (Wales) Regulations 2018 to remove inappropriate references to EU legislation and ensure legal operability post-exit.

4.13 The Regulations also amend the provisions at articles 40 and 41 of the Plant Health (Wales) Order 2018 on the issue of licences for activities prohibited by the order to ensure that they remain operable after EU exit.

4.14 The Regulations also transpose provisions in Council Directives 69/464/EEC, 93/85/EEC, 98/57/EC and 2007/33/EC that apply to competent authorities in relation to the planting of certain *solanaceous* species and the control of relevant plant pests, so that following the UK's exit from the EU in a 'no deal' scenario, the UK will be able to demonstrate to third countries that it continues to maintain the same control over the production of potatoes. This is important in terms of any future trading arrangements the UK may enter into with third countries. These amendments are covered at Part 2, regulations 3 to 22 and the amendments relating to the deficiencies in these provisions that will arise on the UK's withdrawal from the EU, in Part 3, regulations 53 to 55.

5. Consultation

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is to enable the current legislative and policy framework to remain operable after the withdrawal of the UK from the European Union.

6. Regulatory Impact Assessment (RIA)

6.1 The Regulations have no major policy impact. The Regulations largely correct technical deficiencies that will arise from withdrawal and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively.

6.2 There is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector in Wales.

6.3 The impact on business results from additional phytosanitary requirements when importing plants and plant products from the EU into the UK which currently require a plant passport. This is associated with the requirement to provide a certificate, pre-notify imports from the EU, undergo document and identity checks, the requirement to use UK rather than EU plant passports for intra-UK movements of plant passported commodities and third country phytosanitary certificates transiting

through the EU. These direct costs on businesses overall are expected to be negligible and could affect around 20 businesses (based on those registered for plant passporting currently in Wales) and businesses importing third country commodities via the EU.

Additional Direct Costs – on Day 1 the main additional direct costs are expected to be:

6.4 Requirement to provide phytosanitary certificates for regulated EU commodities imported to the UK - The administrative burden of providing the phytosanitary certificate will fall on the National Plant Protection Organisation in the member state exporting the consignment, as well as the exporter in the first instance. However, the cost associated with this is likely to be passed on to the importer and ultimately, the customer. The requirement to provide a phytosanitary certificate is expected to affect a small proportion of plants/plant products only (i.e. those where plant passports are currently required for trade deemed to have a high biosecurity risk) from total annual imports of regulated plants/plant products from the EU to the UK.

6.5 There may also be additional time requirements to businesses of applying for and providing the required information to get the certificate.

6.6 Requirement to pre-notify imports of regulated EU commodities – this will represent an additional administrative burden. Importers will need to register onto the PEACH IT system and provide consignment details and scanned copies of import documentation and phytosanitary certificates. However, there are no charges to use this system and businesses who already trade in regulated third country plants and plant products will be familiar with this process, so the additional costs are expected to be negligible.

6.7 Requirement to undergo documentary and identity checks on regulated EU commodities – this will represent an additional cost burden on importers, who will be subject to a fee for the checks carried out. However, the checks will take place after entry to the UK and consignments will not be held awaiting checks. This avoids an additional time-related burden on businesses. EU imports will also not be subject to, or charged for, physical checks.

6.8 Requirement to use UK rather than EU plant passports for intra-UK movements of plant passported commodities – this will require businesses moving plant passported commodities within the UK to modify the reference code that they use when issuing plant passports, replacing ‘EU’ with ‘UK’. The process for authorising businesses for plant passporting will not change and businesses who will need to use the system on Day 1 are likely to already be registered. Therefore, we expect no extra impact on business from this change.

6.9 Third Country consignments of regulated plant material arriving in the UK via the EU would incur some small additional costs, as importers entering plants and plant products from third countries through Ro-Ro ports will be able to have checks carried out at authorised trade premises inland to avoid impacts at the border. The costs associated with checks and issue of the phytosanitary certificate will simply be a transfer of what previously took place in the EU. It is likely the original EU cost would be passed through to UK importers, assuming the anticipated cost-savings in the EU are similarly passed through then no additional impacts are created. However, there is an additional potential indirect time delay cost for the small proportion of third country goods that transit through the EU to the UK, associated with checks now happening inland instead of at the border. There may also be costs for storage while carrying out checks and any additional transport/wage costs incurred. This is expected to be minimal.

6.10 The impact on the public sector results from the list of direct costs above. Where costs relate to the service provided by the Animal and Plant Health Agency, most can be recovered from businesses who use and benefit from these services, but there are some that are not eligible to be recovered and will, therefore, be borne by the public sector.

Additional Indirect Costs

6.11 We could expect indirect costs if phytosanitary certification processes (either pre-UK or within UK) lead to delays in delivering plants and plant products to the sales shelf, which could erode product life and value. This would particularly be an issue for perishable plants and plant products. However, given that the approach is to undertake any checks remotely for goods that currently require an EU plant passport, in order to minimise disruption (and only follow-up in the way that would be done for plant passporting already), we do not expect any additional impacts on businesses, unless they occur pre-border in EU countries.

6.12 Some businesses may not be able to host checks inland at their premises. These businesses would need to enter their consignment at a port in the UK that could carry out checks at the border. There may, therefore, be indirect costs associated with the requirement to send goods via a different route.

Additional Benefits

6.13 There may be some minimal increase in protection against the spread of plant pests and diseases. This is because the current requirement is for an EU plant passport for trade in higher risk plants and plant products between the UK and other EU countries and that requirement would now increase to a phytosanitary certificate for those plants and plant products. In addition, there may be extra data available on higher risk commodities (through pre-notification), which would allow for better

targeting of plants and pests from the EU which present a biosecurity risk.

6.14 An impact assessment has not been prepared for this instrument because the direct impacts on businesses and the public sector are expected to be negligible and not requiring an impact assessment, as outlined in paragraphs 6.3 to 6.13 above.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable

		jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not	A statement to explain why it is appropriate to create such a sub-delegated power.

		by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

Not applicable.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate”. This is the case because the Regulations largely correct technical deficiencies that will arise from withdrawal and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively, in Wales, once we leave the EU. This is in line with government policy.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this draft instrument, and I have concluded they are a reasonable course of action”. This is because there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist. The public would also expect us to be able to take enforcement action against those that are in breach of plant health legislation. In addition, businesses would expect us to provide conditions within Wales that support the trade and movement of plant material.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

> “The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> "In relation to the draft instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

4.3 Little or no impact on equalities is expected.

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

6.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018.

"In my view there are good reasons for the creation of criminal offences and for the penalties in respect of them in the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019."

Amendments to existing offences in the Plant Health (Wales) Order 2018 will be needed to reflect new requirements introduced through the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 for regulated third country goods which enter Wales via the EU, which have not been subject to plant health checks in the EU and arrive at fast-moving, high volume Ro-Ro ports. The new requirements will require these goods to be moved inland and held securely until plant health checks have been completed. The new offence will provide the ability to enforce and prosecute serious cases of non-compliance with these new requirements.

In addition, a new criminal offence is also required to enforce any failure to comply with any prohibition or restriction in demarcated areas to prevent the spread of certain harmful plant pests in cases where this is an outbreak involving certain pests.

Offences under the Plant Health (Wales) Order 2018 carry, on summary conviction, a penalty of a fine not exceeding level 5 on the standard scale.

7. Legislative sub-delegation

7.1 Not applicable.

8. Urgency

8.1 Not applicable.

SL(5)365 – The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) Regulations 2019

Background and Purpose

These Regulations amend the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (**the 2017 Regulations**). The 2017 Regulations set out the regulatory requirements which apply to providers of certain services regulated under the Regulation and Inspection of Social Care (Wales) Act 2016 (**the 2016 Act**). These are care home services, secure accommodation services, residential family centre services and domiciliary support services.

The amendments include:

- Regulation 4 makes a number of amendments to regulation 2 of the 2017 Regulations dealing with circumstances when a person is exempted from the requirement to register as the provider of a care home service.
- Regulation 5 amends regulation 3 of the 2017 Regulations to stipulate that nursing care provided by a registered nurse does not come within the scope of activity of a domiciliary support service.
- Regulation 8 adds a requirement to regulation 28 of the 2017 Regulations concerning a service provider's policy and procedures for children's savings.

Procedure

Affirmative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

These Regulations are made, partly, under section 27 of the 2016 Act. Section 27(4) of the 2016 Act requires the Welsh Ministers to consult before making regulations under section 27 and requires them to **publish** a statement about the consultation. Section 27(5) further requires the Welsh Ministers to lay a **copy** of that published statement before the Assembly.

We are not aware that a copy of such a statement has been laid before the Assembly. We note that the Explanatory Memorandum provides a link to the summary of consultation responses but providing a link to a document does not amount to laying a document before the Assembly.

We acknowledge that section 27 of the 2016 Act does not specify when a copy of the published statement must be laid before the Assembly, but we would expect it to have been laid at the same time

as the draft Regulations were laid in order to inform both this Committee and the Assembly before the debate and vote in Plenary – we believe that was the intention of the Assembly when it approved the 2016 Act, including section 27(5).

We would welcome clarification from the Welsh Government as to when a copy of the published statement will be laid before the Assembly.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

These draft Regulations are subject to an affirmative resolution procedure, meaning they cannot be made (i.e. signed) unless the draft has been approved by the Assembly.

The signature clause includes the typed name of the Deputy Minister for Health and Social Services (Julie Morgan) who will be making these Regulations. While we have received confirmation that the draft Regulations have not received the wet signature of the Deputy Minister, we believe it to be good legislative practice not to include a name (even a typed name) in the signature clause of draft subordinate legislation, in order to avoid any suggestion that the draft has received a signature.

We note this issue has arisen in several pieces of draft subordinate legislation of late. We would therefore welcome an explanation from the Welsh Government as to why a typed name has been included (when it has not usually been included in draft subordinate legislation the past).

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required to the merits points raised in this report.

Legal Advisers
Constitutional and Legislative Affairs Committee
8 March 2019

Draft Regulations laid before the National Assembly for Wales under section 187(2)(b) and (f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 ("the 2017 Regulations"). The 2017 Regulations set out the regulatory requirements which apply to providers of certain services regulated under the Regulation and Inspection of Social Care (Wales) Act 2016. These are care home services, secure accommodation services, residential family centre services and domiciliary support services.

Regulation 3 amends the 2017 Regulations to identify the types of regulated services to which those Regulations apply. Regulation 4 makes a number of amendments to regulation 2 of the 2017 Regulations dealing with circumstances when a person is exempted from the requirement to register as the provider of a care home service. Some of these amendments are adjustments to avoid the exceptions in regulation 2(1)(e), (f) and (i) ceasing to apply if the children for whom care and accommodation are provided include a child who is disabled. In the case of a service providing accommodation and care to children for one of the purposes specified in regulation 2(1)(i) of the 2017 Regulations, the effect of the amendment is to exempt from the requirement to register services provided for up to 28 days wholly or mainly for

disabled children where prior notification has been given to Welsh Ministers.

The amendment in regulation 4(c) creates a further exception to the definition of care home service in circumstances where care and accommodation are provided to children. The new exception will exempt a person who provides care and accommodation in their own home to a single child (or sibling group) for 28 days or fewer per year from being required to register.

Regulation 5 amends regulation 3 of the 2017 Regulations to stipulate that nursing care provided by a registered nurse does not come within the scope of activity of a domiciliary support service. It creates a separate exception for care and support services provided by a Local Health Board where this is related to a need for nursing care.

Regulation 8 adds a requirement to regulation 28 of the 2017 Regulations concerning a service provider's policy and procedures for children's savings.

Regulation 9 amends regulation 35 of the 2017 Regulations to postpone until 1 April 2020 the requirement that the manager of a regulated service must be registered with Social Care Wales in the case of managers of agencies which were registered as nurses agencies under Part 2 of the Care Standards Act 2000 prior to 2 April 2018 but were not also registered as domiciliary care agencies.

Regulations 10 to 12 make amendments to Part 13 of the 2017 Regulations which deals with the circumstances where additional requirements about the standard of premises apply to new services. The amendments clarify how the additional requirements apply in the case of extensions built on to existing premises of an accommodation-based service.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these regulations.

Draft Regulations laid before the National Assembly for Wales under section 187(2)(b) and (f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) Regulations 2019

Made	***
Coming into force	*1 April 2019*

The Welsh Ministers, in exercise of the powers conferred by sections 2(3) and 27 of the Regulation and Inspection of Social Care (Wales) Act 2016(**1**), and having consulted such persons as they think appropriate, having published a statement about the consultation and having laid a copy of the statement before the National Assembly for Wales in accordance with section 27(4) and (5) make the following Regulations.

A draft of these Regulations was laid before the National Assembly for Wales under section 187(2)(b) and (f) and has been approved by a resolution of the National Assembly for Wales.

Title and commencement

1.—(1) The title of these Regulations is the Regulated Services (Service Providers and

(**1**) 2016 anaw 2.

Responsible Individuals) (Wales) (Amendment) Regulations 2019.

(2) These Regulations come into force on 1 April 2019.

Amendments to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

2. The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017(**1**) are amended in accordance with the following regulations.

Interpretation

3. In regulation 1(3), in the appropriate alphabetical order, insert the following definition—

> ""regulated services" ("*gwasanaethau rheoleiddiedig*") means care home services, domiciliary support services, secure accommodation services or residential family centre services;".

Exception from scope of care home service

4. In regulation 2—

(a) for subparagraph (1)(e), substitute—

> "(e) the provision of accommodation, together with care, where the care provided constitutes child minding within the meaning of section 19(2), or day care within the meaning of section 19(3) of the Children and Families (Wales) Measure 2010(**2**) but this exception does not apply if—
>
> (i) in any 12 month period there are 28 or more periods of 24 hours during which more than 15 hours of child minding or day care are provided in relation to any one child; or
>
> (ii) the care is provided wholly or mainly for disabled children;";

(b) in subparagraph (1)(f), for "the accommodation is provided to a disabled child", substitute "care is provided wholly or mainly for disabled children";

(c) in subparagraph (1)(i)—

(**1**) S.I. 2017/1264 (W. 295)
(**2**) 2010 nawm 1.

(i) in the introductory words omit "because of their vulnerability or need";

(ii) in subparagraph (i) of the part of the clause setting out when the exception does not apply, for "the accommodation is provided to a disabled child", substitute "care is provided wholly or mainly for disabled children unless the service provider has first notified the Welsh Ministers of the arrangements in writing";

(d) at the end of subparagraph (1)(i), for "." substitute ";";

(e) after subparagraph (1)(i) insert the following subparagraph—

"(j) the provision of accommodation, together with care, to a single child or to a sibling group by a person in that person's own home and where care and accommodation are not provided by that person for a total of more than 28 days in any 12 month period.";

(f) after paragraph (3) insert—

"(4) In subparagraph (1)(j) of this regulation, "sibling group" includes both brothers and sisters, and half-brothers and half-sisters."

Exceptions from the scope of domiciliary support service

5. In regulation 3(1)—

(a) in subparagraph (g), for "." substitute ";";

(b) after subparagraph (g) insert—

"(h) the provision of nursing care by a registered nurse;

(i) the provision of care and support by a Local Health Board to meet needs which are related to the needs of individuals for nursing care."

Minor amendment to regulation 12

6. In regulation 12(1), in the parentheses after "Admissions and commencement of the service", for "Part 5" substitute "Part 4".

Policy and procedures for children's savings

7. In regulation 28 (supporting individuals to manage their money), after paragraph (2) add the following paragraph—

"(2A) Where a service provides accommodation for children, the policy and procedures required by this regulation must set

out the steps which the service provider will take to ensure adequate oversight and monitoring of savings made by or on behalf of children including arrangements for keeping records of savings (and expenditure from savings) and passing on these records when a placement comes to an end."

Minor amendment to regulation 34

8. In regulation 34(5), in the English text, remove the word "as" in the second place where it appears.

Amendment to requirement about fitness of managers of domiciliary support services in certain circumstances

9. In regulation 35—

(a) in subparagraph (2)(e), at the beginning, insert "subject to paragraph (10) of this regulation";

(b) in paragraph (9), for the words from "section 1" to the end, substitute "section 87(1) of the Protection of Freedoms Act 2012(**1**)";

(c) after paragraph (9) insert—

"(10) Until 1 April 2020, the requirement under paragraph (2)(e) for a manager to be registered with Social Care Wales does not apply to a manager who is appointed to manage an undertaking—

(a) in respect of which a person is registered, or has applied to register, as the provider of a domiciliary support service, and

(b) in respect of which a person was registered as carrying on a nurses agency under Part 2 of the Care Standards Act 2000(**2**) immediately before 2 April 2018 but was not also registered as carrying on a domiciliary care agency."

Amendment of regulation 49 – Application of Part 13

10. In regulation 49 —

(a) in paragraph (2), in the text describing Category B premises, omit from "an extension" to "which" and substitute "a building or buildings to which an extension is added and the extension";

(**1**) 2012 c. 9.
(**2**) 2000 c. 14.

(b) in paragraph (3) after "with" insert "but in the case of Category B premises, the requirements only apply to the part of the premises comprising the extension (or in the case of regulation 53, to any parts of the external grounds developed in conjunction with the extension)".

Amendment of regulation 52 – additional requirements – communal space

11. In regulation 52—

(a) at the beginning, for "The" substitute "(1) Subject to paragraph (2), the";

(b) at the end, add the following paragraph —

"(2) For Category B premises, this regulation applies so that the space requirement must be met in relation to any additional rooms for individuals."

Amendment of regulation 53 – additional requirements – outoor space

12. In regulation 53, after "grounds", insert "(or, in the case of Category B premises, any part of the external grounds developed in conjunction with the building of the extension)".

Minor amendment to regulation 67

13. In regulation 67(4), for "regulation 34(2)" substitute "regulation 35(2)".

Minor amendment to regulation 73

14. In regulation 73(2), for "any other regulated services" substitute "a domiciliary support service".

Minor amendment to regulation 85

15. In regulation 85(4), in the list of regulations, for "33(1)" substitute "33(2)".

Amendments to Schedule 2

16. In paragraph 5 of Schedule 2—

(a) in subparagraph (a) omit ", injury or illness" and substitute "or injury";

(b) in subparagraph (f) omit "ulcers" and substitute "damage".

Amendments to Schedule 3

17. In Schedule 3—

(a) in paragraph 13, after “staff” add “and/or a volunteer”;

(b) in paragraph16, omit from “a category 3 or 4” to the end and substitute “category 3 or 4 pressure damage or unstageable pressure damage”;

(c) in paragraph 17, for “, injury to or illness of” substitute “or injury to”;

(d) in paragraph 30, for “Incident of child sexual exploitation or suspected child sexual exploitation” substitute “Any incident of child sexual or criminal exploitation or suspected child sexual or criminal exploitation”;

(e) in paragraph 33, for “, injury to or illness of” substitute “or injury to”;

(f) in paragraph 34 omit from “a category 3 or 4” to the end and substitute “category 3 or 4 pressure damage or unstageable pressure damage.”;

(g) in each of paragraphs 42, 44 and 46, for “Any incident of child sexual exploitation or suspected child exploitation”, substitute “Any incident of child sexual or criminal exploitation or suspected child sexual or criminal exploitation”.

Julie Morgan
Deputy Minister for Health and Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers

Date

Explanatory Memorandum to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Amendment Regulations 2019

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Amendment Regulations 2019.

Julie Morgan
Deputy Minister for Health and Social Services
5 March 2019

PART 1

1. Description

The Regulation and Inspection of Social Care (Wales) Act ('the 2016 Act') received Royal Assent on 18 January 2016. It provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce in Wales. To help achieve this it provides the Welsh Ministers with a range of regulation-making and other subordinate legislation powers.

This Explanatory Memorandum relates to *the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) Regulations 2019* ("The 2019 amendment Regulations"). These regulations make changes to *t*he substantive *Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017* ("the substantive Regulations").

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters have been identified.

3. Legislative background

The powers enabling these Regulations to be made are contained in section 2(3) and 27 of the 2016 Act.

These Regulations are being laid before the National Assembly under the affirmative procedure.

4. Purpose and intended effect of the legislation

The purpose of the substantive Regulations is to ensure that providers of care home services, domiciliary support services, residential family centres and secure accommodation services achieve the required standards of care and support so that people's well-being and safety is maintained.

Requirements within the substantive Regulations span a number of aspects of care and support including the provision of information, staffing arrangements, premises and overall environmental standards, governance arrangements, safeguarding arrangements and ensuring the provision of person-centred care.

The 2019 amendment Regulations make a number of small changes to the substantive Regulations for additional clarity and to ensure consistency, where appropriate, with regulations made under phase 3 of implementation of the 2016 Act.

These amendments relate to a number of different areas, outlined below:

Exceptions

Amendments have been made to the exceptions in the substantive Regulations to provide further clarity and certainty about the activity which should fall within the scope of regulation under the 2016 Act.

Exception from the scope of a care home service

Changes have been made to the exceptions for care home services in relation to the provision of care and support to disabled children. These amendments ensure that only services which provide care and support "wholly or mainly" to disable children, within the criteria set out in the regulations, are required to register as a care home, rather than any service which may have a disabled child participating. This replicates the position under the Care Standards Act 2000 and avoids the unintended consequence of bringing services into the scope of regulation that it would not be appropriate to regulate.

A further amendment has been made to the care home exceptions to exempt all holiday schemes of up to 28 days - regardless of whether the children are disabled or not - from having to register as a care home service. This amendment is part of the transitional arrangements for putting in place a suitable regulatory framework for residential holiday schemes for disabled children and ensures a more proportionate approach to the regulation of these schemes.

An amendment has also been made to provide an exception for small scale respite arrangements carried out in the carer's own home for a child or sibling group. This will provide a degree of flexibility for short respite arrangements by parents of disabled children e.g. by those who use direct payments.

Exception from scope of domiciliary support service

Amendments have been made to the exceptions for domiciliary support services to except services which only provide domiciliary support as ancillary to nursing care by a registered nurse from the scope of regulation as a domiciliary support service. It also excludes Local Health Board services providing care and support to meet needs which are related to the needs of individuals for nursing care. The intention is to exclude district and community nursing services from the scope of Care Inspectorate Wales regulation as they are already regulated under NHS legislation.

Extending Social Care Wales (SCW) registration date for managers of nurses agencies

Managers of nurses agencies were not required to register with SCW under the Care Standards Act 2000. As indicated above however, some nurses agencies will be registering with Care Inspectorate Wales (CIW) as domiciliary support services under the 2016 Act. This amendment allows additional time for persons previously registered as managers of nurses agencies under the Care Standards Act, but who were not previously registered as managers of

domiciliary care agencies, to register with SCW. The purpose of this amendment is to provide a degree of flexibility and period of transition for these individuals.

Removing notification and record keeping requirements in respect of incidents of illness

This amendment removes the requirement for regulated services to make notifications and keep records in respect of illness. The purpose of removing this requirement is to recognise that people will develop serious illnesses such as cancer or dementia but not as a consequence of the quality of care provided by the regulated service.

Amending wording in respect of pressure damage

This amendment changes to wording in relation to record keeping and notification requirements in respect of incidents of pressure damage will ensure the Regulations are consistent with the revised wording in the All Wales Tissue Viability Nurse Guidance.

Category B

Amending the wording of the definition of 'Category B' accommodation based services (which relate to a new extension to an existing building), will clarify how the additional requirements for new accommodation apply to providers who extend their premises.

5. Consultation

A 12 week consultation ran from 28 September to 21 December 2019 on the draft regulations. Some changes were made to the regulations following the consultation. The consultation summary report and a list of respondents to the consultation will be published at https://beta.gov.wales/regulated-services-service-providers-and-responsible-individuals-wales-amendment-regulations-2019

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these regulations.

A detailed regulatory impact assessment was completed for the substantive Regulations and is available at http://www.assembly.wales/laid%20documents/sub-ld11277-em/sub-ld11277-em-e.pdf

SL(5)366 – The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

Background and Purpose

These draft Regulations are made under paragraph 1(1) of Schedule 2, and paragraph 21(b) of Schedule 7, to the European Union (Withdrawal) Act 2018. They seek to address failures of retained EU law to operate effectively, and other deficiencies, arising from the withdrawal of the United Kingdom from the European Union.

These draft Regulations amend nine pieces of subordinate legislation in the field of food and agriculture:

- General Food Regulations 2004
- The Food Hygiene (Wales) Regulations 2006
- The Fishery Products (Official Controls Charges) (Wales) Regulations 2007
- Official Feed and Food Controls (Wales) Regulations 2009
- The Materials and Articles in Contact with Food (Wales) Regulations 2012
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013
- The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015
- The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016
- The Novel Foods (Wales) Regulations 2017.

Most of the provisions make minor technical changes to ensure that the Welsh regulations, which provide for the implementation of retained EU law relating to food and feed hygiene and safety, food compositional standards and labelling and food and feed regulated products, will continue to be operable and enforceable in Wales after the UK leaves the EU.

However, the amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 also provide that from exit day, waters from the EU/EEA, like waters from other third countries, must be recognised as natural mineral water in Wales/the UK before they may be placed on the market in Wales. This is subject to a transitional provision which continues in force the existing recognition in Wales of natural mineral waters recognised before exit day in the EU/EEA until such time as the Welsh Ministers issue a notice that such recognition is to cease.

Procedure

Affirmative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly:

- Legal Advisers welcome the clarity and detail of the Explanatory Memorandum and how much that helps the Committee to scrutinise effectively.

Implications arising from exiting the European Union

The subordinate legislation amended by these draft Regulations will constitute "retained EU law" for the purposes of the European Union (Withdrawal) Act 2018. That can have implications for Assembly competence, as the Assembly can be prevented from modifying retained EU law, by means of UK Government regulations under section 12 of the 2018 Act (often referred to as "freezing" regulations).

However, most of the substantive provision made by these draft Regulations could not be "frozen out" of Assembly competence, because the Assembly could have made the equivalent provision under pre-Brexit EU law. An exception would be the provisions in regulation 8, which provides the Welsh Ministers with a mechanism to cease recognition of natural mineral waters which obtained recognitions in other EU/EEA States before exit day. The Assembly could not have ended such recognition before Brexit, as it would have been in breach of EU law. However, it could restore that recognition in future, as to do so would have been compatible with pre-Brexit EU law – even if the UK Government made freezing regulations to that effect.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
6 March 2019

Draft Regulations laid before the National Assembly for Wales under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

AGRICULTURE, WALES

FOOD, WALES

The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred on the Welsh Ministers by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation applying in Wales in the field of food and feed hygiene and safety, food and feed regulated products, and food standards and labelling.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before the National Assembly for Wales under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

AGRICULTURE, WALES

FOOD, WALES

The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(3)

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018(**1**).

In accordance with paragraph 1(8) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in

(**1**) 2018 c.16.

matters of food safety(**1**) there has been open and transparent public consultation during the preparation of these Regulations.

Title, application and commencement

1.—(1) The title of these Regulations is the Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on exit day.

The General Food Regulations 2004

2. In regulation 4(a) of the General Food Regulations 2004(**2**), for "European Union" substitute "United Kingdom".

The Food Hygiene (Wales) Regulations 2006

3.—(1) The Food Hygiene (Wales) Regulations 2006(**3**) are amended as follows.

(2) In Schedule 2, in the table—

(a) in the entry for Article 6(1) of Regulation 852/2004, in the second column, for "other applicable EU legislation or national law" substitute "United Kingdom law";

(b) in the entry for Article 4(1) of Regulation 853/2004, in the second column, omit "manufactured in the European Union";

(c) omit the entry for Article 8 of Regulation 853/2004.

(3) In Schedule 3, in paragraph 10, for "one or more Community languages" substitute "English, or in English and in Welsh".

The Fishery Products (Official Controls Charges) (Wales) Regulations 2007

4.—(1) The Fishery Products (Official Controls Charges) (Wales) Regulations 2007(**4**) are amended as follows.

(2) In regulation 2(1), in the definition of "third country", for "any country or territory, other than

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(**1**) OJ No. L 31, 1.2.2002, p.1, to which there are amendments not relevant to these Regulations.

(**2**) S.I. 2004/3279, amended by S.I. 2005/3254 (W. 247) and S.I. 2011/1043; there are other amending instruments but none is relevant to these Regulations.

(**3**) S.I. 2006/31 (W. 5), amended by S.I. 2011/1043 and S.I. 2016/845 (W. 214); there are other amending instruments but none is relevant to these Regulations.

(**4**) S.I. 2007/3462 (W. 307), amended by S.I. 2011/1043; there is another amending instrument but it is not relevant to these Regulations.

Greenland, which does not comprise the whole or part of an EEA State" substitute "a country or state other than the United Kingdom".

(3) For regulation 4 substitute—

"**4.** Any reference in these Regulations to a specified number of Euros is to be read as that sum converted into pounds sterling using the exchange rate of GBP1 = EUR1.1413."

The Official Feed and Food Controls (Wales) Regulations 2009

5.—(1) The Official Feed and Food Controls (Wales) Regulations 2009(**1**) are amended as follows.

(2) In Schedule 4, for the Table substitute—

"*Column 1* *Competent Authority*	*Column 2* *Provisions of Regulation 882/2004*
The Agency	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 12, 19(1) and (2), 24, 27, 28, 31(1) and (2)(f), and 54
The feed authority	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 15(1) to (4), 16(1) and (2), 18, 19(1) and (2), 20, 21, 22, 24, 27, 28, 31, and 54".

(3) In Schedule 5, for the Table substitute—

"*Column 1* *Competent Authority*	*Column 2* *Provisions of Regulation 882/2004*
The Agency	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 12, 14, 19(1) and (2), 24, 27, 28, 31, and 54
The food authority	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to

(**1**) S.I. 2009/3376 (W. 298), amended by S.I. 2011/1043; there are other amending instruments but none is relevant to these Regulations.

(7), 15(1) to (4), 16(1) and (2), 18, 19(1) and (2), 20, 21, 22, 24, 27, 28, 31, and 54".

(4) In Schedule 6, for the first entry in Column 2 of the Table substitute—

"Requirement that feed and food business operators or their representatives give adequate prior notification of the estimated date and time of physical arrival of the consignment at the designated point of entry and of the nature of the consignment in the manner indicated in that Article (common entry document to be completed and transmitted at least one working day in advance) and Article 7 (common entry document to be drawn up in English, or in English and Welsh)."

The Materials and Articles in Contact with Food (Wales) Regulations 2012

6.—(1) The Materials and Articles in Contact with Food (Wales) Regulations 2012(**1**) are amended as follows.

(2) In regulation 4(3), omit "Community".

(3) In regulation 6(1)—

(a) omit sub-paragraph (a);

(b) in sub-paragraph (b), for "16(1)" substitute "16".

The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013

7.—(1) The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013(**2**) are amended as follows.

(2) Omit regulation 15.

(3) In Schedule 1—

(a) in Table 1, in the entry for Article 26.1, in the second column, for "Commission" substitute "Authority";

(b) in Table 2—

(i) in the entry for Article 21.1 (as read with Article 22), in the second column, for "a language easily understandable to purchasers" substitute "English, or in English and Welsh";

(**1**) S.I. 2012/2705 (W. 291), to which there are amendments not relevant to these Regulations.

(**2**) S.I. 2013/2591 (W. 255), to which there are amendments not relevant to these Regulations.

(c) in the entry for Article 26.2, in the second column, for "Commission" substitute "Authority".

(4) In Schedule 2, in Table 1—

(a) in the entry for Article 10, in the second column, for "Union" substitute "domestic";

(b) in the entry for Article 19.2, in the second column, for "Commission" substitute "Authority";

(c) in the entry for Article 19.3, in the second column, for "Commission" substitute "Authority".

(5) In Schedule 3, in Table 1, in the entry for Article 9.5, in the second column, for "Commission" substitute "Authority".

(6) In Schedule 4, in Table 1—

(a) in the entry for Article 4, in the second column, for "Union" substitute "domestic";

(b) in the entry for Article 14.1, in the second column, for "Commission" substitute "Authority";

(c) in the entry for Article 14.2, in the second column, for "Commission" substitute "Authority".

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015

8.—(1) The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015(**1**) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(i) omit the definition of "Directive 2003/40";

(ii) at the appropriate place, insert—

""relevant bottled water legislation" ("*deddfwriaeth berthnasol ynghylch dŵr wedi'i botelu*") means—

(a) in relation to England, the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007(**2**);

(b) in relation to Northern Ireland, the Natural Mineral Water, Spring Water

(**1**) S.I. 2015/1867 (W. 274), amended by S.I. 2017/935 (W. 229).

(**2**) S.I. 2007/2785. Relevant amending instruments are S.I. 2009/1598, S.I. 2010/433, S.I. 2011/451, S.I. 2014/1855 and S.I. 2018/352.

and Bottled Drinking Water (Northern Ireland) Regulations 2015(**1**);

(c) in relation to Scotland, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007(**2**);";

(iii) at the appropriate place, insert—

""third country" ("*trydedd wlad*") means any country other than the United Kingdom, and includes—

(a) the Bailiwick of Guernsey;

(b) the Bailiwick of Jersey;

(c) the Isle of Man.";

(b) in paragraph (3), omit "Directive 2003/40,".

(3) In regulation 3(1)—

(a) in sub-paragraph (a), for the words from "Directive" to the end substitute "regulation 2(1) of the Human Medicines Regulations 2012(**3**)";

(b) in sub-paragraph (d), for "country other than an EEA State" substitute "third country".

(4) In regulation 4—

(a) in paragraph (2)—

(i) in sub-paragraph (b), for "pursuant to Directive 2009/54" substitute "under the relevant bottled water legislation";

(ii) omit sub-paragraph (c);

(iii) in sub-paragraph (d)—

(aa) in the words before paragraph (i), for "country other than an EEA State" substitute "third country";

(bb) for paragraph (ii) substitute—

"(ii) it has an equivalent recognition given by a responsible authority of another part of the United Kingdom.";

(b) omit paragraph (3).

(5) After regulation 4 insert—

"Transitional provision: withdrawal from the EEA and the EU

4A.—(1) The following waters are accredited, that is to say treated for the purposes of these Regulations as if they were natural mineral

(**1**) S.R. 2015/365. Amended by S.R. 2017/201.
(**2**) S.S.I. 2007/483. Relevant amending instruments are S.S.I. 2009/273, S.S.I. 2010/89, S.I. 2011/1043.
(**3**) S.I. 2012/1916.

waters recognised by the Agency under regulation 4(2)(d)(i)—

(a) established EU recognised natural mineral waters;

(b) established Icelandic recognised natural mineral waters;

(c) established Norwegian recognised natural mineral waters.

(2) The accreditation in paragraph (1) continues to have effect in relation to a natural mineral water to which sub-paragraph (a), (b) or (c) of that paragraph applies until the relevant accreditation cessation date.

(3) In the case of an established EU recognised natural mineral water, if the Welsh Ministers are of the opinion that there is at least one established recognised UK mineral water that is not treated by the responsible authority in at least one member State as a recognised mineral water for the purposes of Directive 2009/54/EC(**1**), the Welsh Ministers may notify the Commission that the accreditation provided for in paragraph (1)(a) in relation to established EU recognised natural mineral waters is to cease.

(4) In the case of an established Icelandic recognised natural mineral water, if the Welsh Ministers are of the opinion that there is at least one established recognised UK mineral water that is not treated as a recognised mineral water in Iceland for the purposes of Directive 2009/54/EC, the Welsh Ministers may notify the Icelandic Food and Veterinary Authority that the accreditation provided for in paragraph (1)(b) in relation to established Icelandic recognised natural mineral waters is to cease.

(5) In the case of an established Norwegian recognised natural mineral water, if the Welsh Ministers are of the opinion that there is at least one established recognised UK mineral water that is not treated in Norway as a recognised mineral water for the purposes of Directive 2009/54/EC, the Welsh Ministers may notify the Norwegian Food Safety Authority that the accreditation provided for in paragraph (1)(c) in relation to established Norwegian recognised natural mineral waters is to cease.

(6) No notification may be given under paragraph (3), (4) or (5) before the end of the period of 6 months beginning on the day on which exit day falls.

(**1**) OJ No L 164, 26.6.2009, p. 45.

(7) The accreditation cessation date specified in a notification given under paragraph (3), (4) or (5) must be a date that is at least 6 months after the date on which the notification is given, beginning with the day after the day on which that notification is given.

(8) The Welsh Ministers must publish a copy of any notification given under paragraph (3), (4) or (5) in such manner as appears appropriate to the Welsh Ministers in order to bring its effect to the notice of those that the Welsh Ministers consider likely to be, or representative of those likely to be, affected in Wales as soon as is reasonably practicable.

(9) The Welsh Ministers must from time to time publish, in such manner as appears appropriate to the Welsh Ministers, a list of the names of the established EU, Icelandic and Norwegian recognised natural mineral waters that are treated as accredited natural mineral waters under paragraph (1) ("the paragraph 9 list").

(10) Where a notification is given under paragraph (3), (4) or (5), the Welsh Ministers must update the paragraph 9 list as soon as reasonably practicable after the accreditation cessation date specified in the notification.

(11) The paragraph 9 list is to be treated as conclusive evidence that the waters are accredited natural mineral waters for the purposes of these Regulations.

(12) In this regulation—

"accreditation cessation date" ("*dyddiad y daw'r achrediad i ben*") means the cessation date as notified by the Welsh Ministers under paragraph (3), (4) or (5);

"Directive 2009/54/EC" ("*Cyfarwyddeb 2009/54/EC*") means Directive 2009/54/EC as incorporated into the EEA agreement, and as it had effect, immediately before exit day;

"established EU recognised natural mineral water" ("*dŵr mwynol naturiol sefydledig a gydnabyddir yn yr UE*") means—

(a) a natural mineral water extracted from the ground in any member State—

(i) that immediately before exit day had the status of a recognised natural mineral water for the purposes of Directive 2009/54/EC, and

(ii) for which that recognition remains in force;

(b) a natural mineral water extracted from the ground in a third country—

(i) that immediately before exit day had the status of a recognised natural mineral water for the purposes of Directive 2009/54/EC having been recognised by any member State as a natural mineral water for the purposes of Directive 2009/54/EC based on a certificate ("Article 1(2) certificate") of the type referred to in the second subparagraph of Article 1(2) of Directive 2009/54/EC issued by the responsible authority in the country of extraction,

(ii) for which that recognition remains in force, and

(iii) for which the Article 1(2) certificate remains valid;

"established Icelandic recognised natural mineral water" ("*dŵr mwynol naturiol sefydledig a gydnabyddir yng Ngwlad yr Iâ*") means a natural mineral water extracted from the ground in Iceland—

(a) that immediately before exit day had the status of a recognised natural mineral water for the purposes of Directive 2009/54/EC, and

(b) for which that recognition remains in force;

"established Norwegian recognised natural mineral water" ("*dŵr mwynol naturiol sefydledig a gydnabyddir yn Norwy*") means a natural mineral water extracted from the ground in Norway—

(a) that immediately before exit day had the status of a recognised natural mineral water for the purposes of Directive 2009/54/EC, and

(b) for which that recognition remains in force;

"established recognised UK natural mineral water" ("*dŵr mwynol naturiol sefydledig a gydnabyddir yn y DU*") means a natural mineral water extracted from the ground in the United Kingdom—

(a) that immediately before exit day had the status of a recognised natural mineral water for the purposes of Directive 2009/54/EC, and

(b) for which that recognition remains in force;

"member State" ("*Aelod-wladwriaeth*") means a member State of the EU as constituted immediately after exit day;

"third country" ("*trydedd wlad*") has the same meaning as in Directive 2009/54/EC."

(6) In regulation 24(1)(a), omit "satisfies the requirements of Directive 98/83 and in particular".

(7) In regulation 27A—

(a) in paragraph (b), omit "or from another EEA State";

(b) in paragraph (c)—

(i) for "country other than an EEA State" substitute "third country";

(ii) omit "or in another EEA State".

(8) In regulation 27B—

(a) in paragraph (b)—

(i) omit "or from another EEA State";

(ii) for the words from "as complying" to "as implemented" substitute "under the relevant bottled water legislation applying";

(iii) omit "or that EEA State";

(b) in paragraph (c)—

(i) for "country other than an EEA State" substitute "third country";

(ii) omit "or in another EEA State";

(iii) for the words from "Article 5" to "spring water" substitute "the relevant bottled water legislation that applies in that part of the United Kingdom".

(9) Omit regulation 33(4).

(10) In regulation 36(1)(b), for "country other than an EEA State" substitute "third country".

(11) In Schedule 1—

(a) in paragraph 1, in the words before sub-paragraph (a), omit "for the purposes of Article 1 of Directive 2009/54";

(b) in Part 2, in the heading, for "country other than an EEA State" substitute "third country";

(c) in paragraph 5, in the words before sub-paragraph (a)—

(i) for "country other than an EEA State" substitute "third country";

(ii) omit "for the purposes of Article 1 of Directive 2009/54".

(12) In Schedule 10, in paragraph 1(1), omit "with Annex III to Directive 98/83 and".

(13) In Schedule 11, in paragraph 1, omit "Annex III to Directive 2013/51 and".

The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016

9.—(1) The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016(**1**) are amended as follows.

(2) In regulation 7(2)—

(a) in sub-paragraph (a), omit the words from ", as read" to the end;

(b) in sub-paragraph (c), for "Commission" substitute "Food Safety Authority".

(3) In regulation 10(2)(d), for "Commission" substitute "Food Safety Authority".

(4) In regulation 13(2)—

(a) omit sub-paragraph (a);

(b) in sub-paragraph (b), for "Commission" substitute "appropriate authority".

(5) For Schedule 1, substitute the new Schedule 1 set out in the Schedule to these Regulations.

The Novel Foods (Wales) Regulations 2017

10.—(1) The Novel Foods (Wales) Regulations 2017(**2**) are amended as follows.

(2) In Schedule 1, in the table—

(a) in the entry for Article 6(2) as read with Articles 24 and 35(2), in the second column, omit "Union";

(b) in the entry for Article 25, in the second column, for "European Commission" substitute "Food Safety Authority".

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
Date

(**1**) S.I. 2016/386 (W. 120), to which there are amendments not relevant to these Regulations.
(**2**) S.I. 2017/1103 (W. 279).

SCHEDULE Regulation 9(5)

Schedule to be substituted for Schedule 1 to the Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016

"Schedule 1 Regulation 12

Specified Provisions of Regulation 767/2009

Specified provision	*Subject matter*
Article 4(1) and (2), as read with Article 4(3) and Annex 1	General safety and other requirements to be met when feed is placed on the market or used.
Article 5(1)	Extension of requirements in relation to feed for food-producing animals in other legislation to apply to feed for non food-producing animals.
Article 5(2), as read with Article 12(1), (2) and (3)	Obligation on person responsible for labelling to make information available to competent authority.
Article 6(1), as read with Annex 3	Prohibition or restriction on the marketing or use of certain materials for animal nutritional purposes.
Article 8	Controls on the levels of additives in feeds.
Article 9	Controls on the marketing of feeds for particular nutritional purposes.
Article 11, as read with Article 12(1), (2) and (3), Annexes 2 and 4 and the Catalogue of feed materials	Rules and principles governing the labelling and presentation of feed.
Article 12(4) and (5)	Designation of the person responsible for labelling and the obligations and responsibilities of that person.
Article 13(1), as read with Article 12(1), (2) and (3)	General conditions on making a claim about the characteristics or functions of a feed on the labelling or presentation of it.
Article 13(2) and (3), as read with Article 12(1), (2) and (3)	Special conditions applying to claims concerning optimisation of the nutrition and support or protection of the physiological conditions.
Article 14(1) and (2), as read with Article 12(1), (2) and (3)	Requirements for the presentation of the mandatory labelling particulars.
Article 15, as read with Articles 12(1), (2) and (3) and 21 and with Annexes 6 and 7	General mandatory labelling requirements for feed materials and compound feeds.
Article 16, as read with Article 12(1), (2) and (3) and 21 and with Annexes 2 and 5 and the Catalogue of feed materials	Specific labelling requirements for feed materials.
Article 17(1) and (2) as read with Articles 12(1), (2) and (3) and 21 and with Annexes 2, 6 and 7	Specific labelling requirements for compound feeds.
Article 18, as read with Article 12(1), (2) and (3)	Additional labelling requirements for feed for particular nutritional purposes (dietetic feeds).
Article 19, as read with Article 12(1), (2) and (3)	Additional labelling requirements for pet food.

Article 20(1) as read with Article 12(1), (2) and (3) and with Annex 8	Additional requirements for labelling of non-compliant feed, such as that containing contaminated materials.
Article 23	Requirements relating to the packaging and sealing of feed materials and compound feeds for placing on the market.
Article 24(2)	Requirement that if the name of a feed material listed in the Catalogue of feed materials is used, all relevant provisions of the Catalogue must be complied with.
Article 24(3)	Obligation on a person who first places on the market a feed material not listed in the Catalogue of feed materials to notify its use.”

Explanatory Memorandum to the Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food (Miscellaneous Amendments) (Wales) (EU Exit) (No.2) Regulations 2019

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

Vaughan Gething AM
Minister for Health and Social Services
5 March 2019

PART 1

1. Description

The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 ("this Instrument") amend the Statutory Instruments listed below. These amendments are required to address deficiencies arising from EU Exit and ensure that the statute book remains operable following the UK's exit from the EU.

- General Food Regulations 2004
- The Food Hygiene (Wales) Regulations 2006
- The Fishery Products (Official Controls Charges) (Wales) Regulations 2007
- Official Feed and Food Controls (Wales) Regulations 2009
- The Materials and Articles in Contact with Food (Wales) Regulations 2012
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013
- The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015
- The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016
- The Novel Foods (Wales) Regulations 2017

The instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ("the 2018 Act") defines as 29 March 2019 at 11.00pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument is being made using powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the 2018 Act.

As set out in the Ministerial Statement in Part 2 of the Annex to this Explanatory Memorandum, it is proposed that the instrument be subject to the affirmative procedure under paragraph 1(8) of Schedule 7 to the 2018 Act.

3. Legislative background

This instrument is being made using the power in Part 1 of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively, or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21 of Schedule 7 to the 2018 Act. In accordance with the requirements of that Act the Minster has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

General Food Regulations 2004

These Regulations provide for the enforcement of Regulation (EC) No 178/2002 in relation to Wales. The Regulations originally applied in relation to England, Scotland and Wales but have subsequently revoked in relation to England.

Regulation (EC) No 178/2002, as implemented in Wales by these Regulations, establishes the responsibility of Food Business Operators (FBOs) to produce food with a high level of protection of human life and health and establishes principles of traceability through the food chain. Together, they provide the high-level principles underpinning the placing of safe food and feed on the market in the EU. They also establish and describe institutions such as the European Food Safety Authority and administrative functions concerning food and feed safety such as the network for the notification of direct and indirect risk to human health arising from food and feed (the 'Rapid Alert System').

The Food Hygiene (Wales) Regulations 2006

These Regulations provide for the execution and enforcement of the following EU instruments in relation to Wales:

- Regulation (EC) 852/2004 laying down general principles for the hygienic production of foodstuffs by food business operators.
- Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin.
- Regulation (EC) 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption.
- Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs.
- Regulation (EC) No. 2075/2005 laying down specific rules on official controls for Trichinella in meat.

The 2006 Regulations establish the enforcement mechanisms for competent authorities to implement EU food hygiene rules and set out the remedies available to enforcement authorities on the discovery of non-compliance.

Additionally, the 2006 Regulations provide for the procurement and analysis of samples and create a presumption that specified food is intended for human consumption.

The Fishery Products (Official Controls Charges) (Wales) Regulations 2007

These Regulations set out the charges required to be levied for official controls undertaken on relevant fishery products as specified in Regulation (EC) No. 854/2004.

Regulation (EC) No. 854/2004 lays down specific rules for the organisation of official controls on products of animal origin, including fishery products, intended for human consumption.

Official Feed and Food Controls (Wales) Regulations 2009

These Regulations implement the following EU Regulations in relation to Wales:

- Regulation (EC) No. 882/2004 providing for official controls to be performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.
- Regulation (EU) 2017/625 setting out official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.
- Regulation (EC) 854/2004 providing specific rules for the organisation of official controls on products of animal origin intended for human consumption.

The 2009 Regulations set out the competent authorities for the enforcement of feed and food law, the control mechanisms by which enforcement authorities may monitor the production and supply of food and feed in order to ensure a high level of protection for human life and health, as well as the powers to deal with any non-compliance with the relevant rules.

The Materials and Articles in Contact with Food (Wales) Regulations 2012

These Regulations implement the following EU Regulations in relation to Wales:

- Regulation (EU) No 10/2011 providing rules on plastic materials and articles intended to come into contact with food.
- Regulation (EC) No 1935/2004 providing rules on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC.
- Regulation (EC) No 1895/2005 providing rules on restrictions of use of certain epoxy derivatives in materials and articles intended to come into contact with food.
- Regulation (EC) No 2023/2006 establishing good manufacturing practices for materials and articles intended to come into contact with food.
- Regulation (EC) No 450/2009 providing rules on active and intelligent materials and articles intended to come into contact with food.

The EU Regulations, as implemented by the 2012 Regulations, provide for the protection of food from hazards that may arise from materials and articles with which they may come into contact throughout the food chain.

The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013

These Regulations implement the following EU Regulations in relation to Wales:

- Regulation (EC) No. 2065/2003 on smoke flavouring used or intended for use in or on foods).
- Regulation (EC) No. 1332/2008 on food enzymes.
- Regulation (EC) No. 1333/2008 on food additives.
- Commission Regulation EU No. 231/2012 laying down specifications for food additives approved under 1333/2008.
- Regulation (EC) No. 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods flavourings.

The Regulation also transposes Directive 2009/32/EC on extraction solvents used in the production of foodstuffs and food ingredients.

Food improvement agents are used in or on food for a technological purpose during its production or storage. They are also used to improve the taste, texture, and appearance of food. In general, the harmonised EU legislation governing these substances requires a pre-market risk assessment and authorisation before they may be placed on the market. The legislation provides lists of permitted substances, applicable specifications, conditions of use, as well as categories of foods in which they may be used. The legislation also provides specific labelling requirements for certain food products sold to consumers. This includes a mandatory warning on products containing aspartame as it is a source of phenylalanine, which could be detrimental to those suffering from Phenylketonuria.

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015

These Regulations transpose the following EU Directives in relation to Wales:

- Directive 98/83/EC on the quality of water intended for human consumption.
- Directive 2002/40/EC establishing the list, concentration limits and labelling requirements for the constituents of natural mineral waters and

the conditions for using ozone-enriched air for the treatment of natural mineral waters and spring waters.
- Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters.
- Directive 2013/51/EURATOM laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption.

The Regulations also implement the following EU Regulations in relation toWales:

Regulation (EU) No 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters.

Of particular relevance to the amendments in this Instrument, Directive 2009/54/EC requires natural mineral waters to go through a process of recognition to prove that they have the necessary composition and characteristics to be sold and marketed as natural mineral waters in all EU member States. Recognition is carried out by individual member States.

The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016

These Regulations implement the following EU Regulations in relation to Wales:

- Regulation (EC) No 178/2002 in relation to general safety requirements.
- Regulation (EC) No 1829/2003 on genetically modified food and feed.
- Regulation (EC) No 1831/2003 on additives for use in animal feed.
- Regulation (EC) No 767/2009 on placing on the market and use of feed.

The Regulations also transpose:

- Directive 2002/32/EC on undesirable substances in animal feed.
- Directive 2008/38/EC to establish a list of intended used for animal feedingstuffs for particular nutritional uses.

Regulation (EC) No 178/2002, as far as related to feed and implemented in Wales by these Regulations, establishes the responsibility of Feed Business Operators (FBOs) to produce feed with a high level of protection of animal and human life and health and establishes principles of traceability through the food chain.

Together, these regulations lay down the conditions relating to feed hygiene, feed additives, placing on the market of genetically modified food and feed, sampling and marketing and use of feed including labelling (including high-level principles around the placing of safe animal feed on the market).

The Novel Foods (Wales) Regulations 2017

These Regulations implement the following EU Regulations in relation to Wales:

- Regulation (EU) 2015/2283 on novel foods.

Novel Foods are foods or food ingredients that do not have a significant history of consumption within the EU before 15 May 1997. The EU legislation on Novel Foods is harmonised across the EU. In the interests of safeguarding public health, they are required to have a pre-market risk assessment and authorisation before being placed on the market. A recent example of this is chia seeds. The pre-market risk assessment examines a range of issues to establish whether consumers would be at risk if they consumed the novel food, how high the level of risk is likely to be and how, if a risk is established, that risk would be managed.

Why is it being changed?

The Instrument will predominantly make minor and technical changes. They are necessary to ensure that the domestic legislation implementing retained direct EU legislation continues to operate effectively after EU exit.

The amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 ensure there will continue to be a functioning statute book on exit day and will continue in force existing recognitions of natural mineral waters which obtained their recognitions in other EU/EEA States before exit day. The amendments also provide for an effective mechanism to cease, in appropriate circumstances, this ongoing recognition in order to retain control over the recognition and sale of natural mineral waters in Wales.

The specific changes being proposed to the regulations are detailed below.

General Food Regulations 2004

- Replacing references to ‘European Union’ in a descriptor of an Article of Regulation 178/2002 that is amended by the General Food Law (Amendment etc.) (EU Exit) Regulations 2019[1].

The Food Hygiene (Wales) Regulations 2006

[1] S.I. 2019/XX.

- Replacing reference to ‘EU legislation or national law’ with ‘UK law’.
- Omitting references to ‘European Union’ in a descriptor of an Article of Regulation 178/2002 that is amended by the Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019[2] and removing the descriptor of another in consequence of that Article being omitted.
- Ensuring that provision for the use of the Welsh language is included. Previously, documentation accompanying raw sugar had to be accompanied by the words, ‘in one or more Community languages’, ‘This product must be refined before being used for human consumption’. As amended, those words will have to be displayed in English, or in English and Welsh.

The Fishery Products (Official Controls Charges) (Wales) Regulations 2007

- Amending the definition of a ‘third Country’.
- Amending the Euro/Sterling conversion rate for the purposes of the Regulations so as to be consistent with the conversion rate used in the parent retained direct EU legislation (Regulation (EC) No. 882/2004 of the European Parliament and the Council on official controls, as amended by the Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2019[3]) and to remove the dependency on the Official Journal of the European Union.

The Official Feed and Food Controls (Wales) Regulations 2009

- Amending several cross-references to Articles of Regulation (EC) No 882/2004 to reflect amendments made to the relevant retained direct EU law by the Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2019.
- Amending the descriptor of Article 7 of Regulation (EC) 669/2009 to reflect amendments made to it by the Food and Feed Imports (Amendment) (EU Exit) Regulations 2019[4]. Those amendments provide that information concerning consignments of imported food and feed may now be provided in “English, or in English and Welsh”, rather than in “one or more Community languages”.

The Materials and Articles in Contact with Food (Wales) Regulations 2012.

- Amending descriptors of Articles of relevant EU instruments in light of amendments made by the Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019[5].

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[2] S.I. 2019/XX.
[3] S.I. 2019/XX.
[4] S.I. 2019/XX.
[5] S.I. 2019/XX.

The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013

- Amending several cross-references to, and descriptors of, Articles of retained direct EU legislation as a result of revocations of or amendments to those Articles by the Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019[6]. The amendments include amending the descriptor of Article 21.1 of Regulation (EC) 1333/2008 to reflect the amendment that food additives not intended for sale to the final consumer must now be labelled in 'English, or in English and Welsh' rather than in 'a language easily understandable to purchasers'.

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015

- Removing various redundant references to Directive 98/83, Directive 2001/83, Directive 2003/40, Directive 2009/54 and Directive 2013/51.
- Inserting a definition of 'third country' capturing any country other than the UK (and associated amendments).
- Replacing reference to recognition of natural mineral water 'in accordance with Directive 2009/54' with reference to recognition in accordance with the relevant regulations in force in other parts of the UK to ensure that natural mineral waters recognised in other parts of the UK may continue to be sold in Wales.
- Providing that from exit day, water from all third countries must be recognised in Wales by the Food Standards Agency ("FSA") or by the relevant authority in another part of the UK before it may be placed on the market in Wales.
- Removing reference to publication in the Official Journal of the European Union of lists of recognised natural mineral waters.
- Inserting a transitional provision providing that water recognised before exit day in or by EU/EEA States as natural mineral waters may continue to be sold in Wales post-exit day and conferring a power on the Welsh Ministers to issue a notice to cease that ongoing recognition in specified circumstances. The amendments also impose a duty on the Welsh Ministers to publish a list of the EU/EEA waters that remain recognised natural mineral waters in Wales.
- Providing that fluoride removal treatments and ozone reduction treatments carried out in any third country must have been approved by the relevant authority in that country, and that the approval procedures used in that third country must be approved by the FSA or other responsible UK authority as being equivalent to the ones in force in

[6] S.I. 2019/XX.

Wales/the UK, before water which has been subjected to such treatment may be sold in Wales.
- Removing an exemption from enforcement action for spring water from EEA countries that does not satisfy specific domestic requirements.

The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016

- Amending cross-references to, and descriptors of, Articles 20(6) and 21(3) of retained direct EU legislation Regulation (EC) 1829/2003 to reflect amendments made to that Regulation by the Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019[7].
- Amending descriptors of Article 12(2) (changing reference from 'Commission' to 'appropriate authority' for reporting purposes) of retained direct EU law Regulation (EC) 1831/2003 and cross-references to, and descriptors of, Articles 13(1)(b) and 26(1)(b) of Regulation 767/2009 to reflect amendments made by the Animal Feed (Amendment) (EU Exit) Regulations 2019[8].
- Replacing Schedule 1 to the 2016 Regulations on the specified application of Regulation 767/2009. All of the amendments are being made in consequence of amendments made to the relevant Articles by the Animal Feed (Amendment) (EU Exit) Regulations 2019.

The Novel Foods (Wales) Regulations 2017

- Amending references to the 'Commission' and 'Union' in descriptors of Articles 6(2) and 25 of Regulation (EU) 2015/2283 to reflect amendments made to those Articles by the Novel Food (Amendment) (EU Exit) Regulations 2019[9].

What will it now do?

Principally, this Instrument will make minor technical changes to ensure that the Welsh regulations, which provide for the implementation of retained EU law relating to food and feed hygiene and safety, food compositional standards and labelling and food and feed regulated products, will continue to be operable and enforceable in Wales after the UK leaves the EU. These amendments do not make any changes to the way the Welsh regulations operate.

In relation to the amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015, the amendments also provide that from exit day, waters from the EU/EEA, like waters from other third countries, must be recognised as natural mineral water in Wales/the UK before they may be placed on the market in Wales. This is subject to a transitional

[7] S.I. 2019/XX.
[8] S.I. 2019/XX.
[9] S.I. 2019/XX.

provision which continues in force the existing recognition in Wales of natural mineral waters recognised before exit day in the EU/EEA until such time as the Welsh Ministers issue a notice that such recognition is to cease.

5. Consultation

A four-week consultation was conducted in Wales on the principle of the proposed amendments. The consultation closed on 4 February 2019. We received three responses to the consultation in Wales. We did not receive any comments on the technical amendments to be made by these proposed amendments.

Two of the three responses received commented on the proposed amendments relating to natural mineral water. The responses were identical, sent by representatives of enforcement authorities. They agreed that there ought to be a transitional period post-exit during which EU27/EEA recognised natural mineral waters should continue to be recognised as natural mineral water in Wales.

While the respondents' preference was for a fixed five-year transition period, we consider that the transitional provision proposed in these Regulations, which continues existing EU27/EEA recognitions in force on exit day but enabling the Welsh Ministers to issue a notice to cease those recognitions when certain criteria are met, is preferable. It strikes the appropriate balance between ensuring consumer confidence and continuity of supply immediately after exit but also maintaining the Welsh Ministers' control over the recognition of EU27/EEA natural mineral waters in Wales. It also has the benefit of maintaining consistency with the approach adopted elsewhere in the United Kingdom.

6. Regulatory Impact Assessment (RIA)

No impact assessment has been produced in relation to these Regulations as no impact on the private, voluntary or public sectors is foreseen.

This legislation has no impact on the statutory duties (sections 77-79 of the Government of Wales Act 2006) or statutory partners (sections 72-75 of the Government of Wales Act 2006).

Annex [x]
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

Not applicable/required.

2. Appropriateness statement

The Minister for Health and Social Services, Vaughan Gething, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food (Miscellaneous Amendments) (Wales) (EU Exit) (No.2) Regulations 2019 do no more than is appropriate.”

This is the case because the Instrument predominantly corrects technical deficiencies arising from EU exit. In relation to the amendments relating to natural mineral water, in a no deal scenario, the Instrument will continue in force after exit the existing recognition of natural mineral waters which obtained their recognition in or by another member State in the EU/EEA and will introduce a power for the Welsh Ministers to end the recognition on giving notice. This policy will ensure market stability immediately after EU exit, facilitating trade and business confidence, and will protect consumers against price increases as a direct consequence of EU exit, but will also enable the Welsh Ministers to maintain their control over the recognition and sale of EU/EEA natural mineral waters in Wales.

3. Good reasons

The Minister for Health and Social Services, Vaughan Gething, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.”

These are that failure to make this legislation would result in Welsh legislation relating to feed and food hygiene, food compositional standards and labelling and food and feed regulated products failing to operate effectively after the UK leaves the EU.

4. Equalities

The Minister for Health and Social Services, Vaughan Gething, has made the following statement

“The Instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

The Minister for Health and Social Services, Vaughan Gething, has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the [draft] instrument, I, Vaughan Gething have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this Explanatory Memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

The Minister for Health and Social Services, Vaughan Gething, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

”In my view it is appropriate to create a relevant sub-delegated power in the Food (Miscellaneous Amendments) (Wales) (EU Exit) (No.2) Regulations 2019.”.

This is appropriate because it enables the Welsh Ministers to withdraw recognition of natural mineral waters which obtained their recognition in or by another member State in the EU or EEA, giving a period of notice for businesses to adjust, should the need arise, therefore maintaining the Welsh Ministers’ control over the recognition and sale of EU/EEA natural mineral waters in Wales.

8. Urgency

Not applicable/required.

Agenda Item 4.21

SL(5)368 – The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are proposed to be made by the Welsh Ministers pursuant to section 11 of, and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018, to correct a deficiency arising from the UK's withdrawal from the European Union.

Regulation 1(4) of the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003, as amended by the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2018 ("the **2003 Regulations**") defines a "money market fund" as including a collective investment scheme in transferable securities subject to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009. The amendment made by these Regulations limits that definition to a collective investment scheme authorised or recognised under domestic legislation only (specifically, Part XVII of the Financial Services and Markets Act 2000).

Procedure

Affirmative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 2 amends Regulation 1(4) of the 2003 Regulations. The Explanatory Memorandum to these Regulations contains inconsistencies (to which, see below) and indicate variously that the amendment amounts to removing reference to "EU regulations" (para 1.2) or the "European Directive and Council meeting" (para 4.4).

However, Regulation 2 omits paragraph (a) of the definition of "money market fund" in its entirety, which has the effect of omitting provision defining such a fund as being an undertaking for collective investment in transferable securities. It is therefore not clear, in light of the content of the Explanatory Memorandum, whether this change is intended.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Explanatory Memorandum to these Regulations, at paragraph 2.1, notes that these Regulations "*would ordinarily have been made through the negative annulment procedure however, to ensure that the instrument is operable after exit day it is proposed that the affirmative procedure is followed*".

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Explanatory Memorandum to these Regulations appears to contain a number of errors:

1. The title of these Regulations is "The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) (EU Exit) Regulations 2019 (referred to in the Explanatory Memorandum as "The Local Authorities Capital Finance and Accounting (Wales) (Amendment)(EU Exit) Regulations 2019";

2. Paragraph 1.2,, and a statement made by the Minister at paragraph 3.1 in Part 2 of the Annex, indicate that these Regulations amend the definition of "money market fund" in the 2003 Regulations to "remove reference to EU regulations" (the amendment made in facts omits a reference to Directive 2009/65/EC); and

3. Paragraph 4.4 states that these Regulations "remove reference to the European Directive and Council meeting." (as above, these Regulations omit a reference to Directive 2009/65/EC).

Implications arising from exiting the European Union

No further points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
14 March 2019

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 of the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

LOCAL GOVERNMENT, WALES

The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 11 of, and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Regulation 2 amends the definition of "money market fund" in the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (S.I. 2003/3239 (W. 319)).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 of the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

LOCAL GOVERNMENT, WALES

The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) (EU Exit) Regulations 2019

Made ***

Coming into force in accordance with regulation 1

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 11 of, and paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018(**1**).

In accordance with paragraph 1(9) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

Title and commencement

1. The title of these Regulations is the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) (EU Exit) Regulations 2019 and they come into force on exit day(**2**).

(**1**) 2018 c. 16.
(**2**) "Exit day" is defined in section 20(1) to (5) (interpretation) of the European Union (Withdrawal) Act 2018.

Amendment of the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003

2. In regulation 1(4) of the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003(**1**), in the definition of "money market fund", omit paragraph (a).

Julie James
Minister for Housing and Local Government, one of the Welsh Ministers
Date

(**1**) S.I. 2003/3239 (W. 319). Relevant amendments were made by S.I. 2018/325 (W. 325).

Explanatory Memorandum to: The Local Authorities Capital Finance and Accounting (Wales) (Amendment)(EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Welsh Government's Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Authorities Capital Finance and Accounting (Wales) (Amendment)(EU Exit) Regulations 2019.

I have made the Statements required by the European Union (Withdrawal) Act 2018.

Julie James AM
Minister for Housing and Local Government
5 March 2019

PART 1

1. Description

1.1 This instrument makes an amendment to:

- The Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003.

1.2 Regulation 3 of the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2018 amended regulation 1 of the 2003 Regulations and introduced a new definition of "money market fund". The amendments made by this instrument amend the definition of "money market fund" to remove references to EU regulations.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This instrument is being made under section 11 of and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018. The amendments to the instrument would have ordinarily been made through the negative annulment procedure however, to ensure that the instrument is operable after exit day it is proposed that the affirmative resolution procedure is followed.

3. Legislative background

3.1 This instrument is being made using the power in Part 1 of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively, or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

3.2 This instrument is also made under paragraph 21 of Schedule 7 of the Act. These Regulations are being under the affirmative resolution procedure.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2018 set out the definition of "money market fund" as a collective investment scheme in transferable securities subject to Directive 2009/65/EC(2) of the European Parliament and the Council of 13 July 2009, as well as under the Financial Services and Market Act 2000. The European Directive sets out the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

Why is it being changed?

4.3 The minor and technical changes made to these instruments address the failure of retained EU law to operate effectively following the withdrawal of the United Kingdom from the European Union.

What will it now do?

4.4 This SI makes amendments to the definitions of “money market fund” to remove references to the European Directive and Council meeting.

5 Consultation

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6 Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has not been conducted. No policy change is introduced through the amending Regulations. The Regulations are technical in nature and intended solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6.2 These amending Regulations have no impact on the statutory duties as set out in sections 77 to 79 of the Government of Wales Act 2006 or the statutory partners as set out in Sections 72 to 75 of the Government of Wales Act 2006.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

6.1 Not applicable.

2. Appropriateness statement

2.1 The Minister for Housing and Local Government, Julie James AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> *"In my view the Local Authorities Capital Finance and Accounting (Wales) (Amendment)(EU Exit) Regulations 2019 do no more than is appropriate. This is the case because the instrument makes amendments which are technical in nature and designed to address failures of retained EU Law to operative effectively after exit day".*

3. Good reasons

3.1 The Minister for Housing and Local Government, Julie James AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> *"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is because the instrument makes technical amendments to definition of "money market fund" to remove references to EU regulations".*

4. Equalities

4.1 The Minister for Housing and Local Government, Julie James AM, has made the following statement:

> *"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".*

4.2 The Minister for Housing and Local Government, Julie James AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“I have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this Explanatory Memorandum.

6. Criminal offences

6.1 Not applicable.

7. Legislative sub-delegation

7.1 Not applicable.

8. Urgency

8.1 Not applicable.

SL(5)367 – The Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are to be made by the Welsh Ministers pursuant to paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 and sections 18(2), 30(6), 36(8) and 78(1) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 ("the **LTT Act**").

The Regulations predominately amend the LTT Act and the Tax Collection and Management (Wales) Act 2016 ("the **TCM Act**"). The Regulations:

1. update an incorrect reference in Schedule 6 to the LTT Act to clarify that an obligation to transfer payment entitlements under the basic payment scheme of income support for farmers pursuant to Regulation (EU) No 1307/2013 is not included as chargeable consideration on the grant of a lease for the purposes of land transaction tax (replacing a referencing to the predecessor "single payment" scheme under Council Regulation (EC) No 73/2009);

2. amend Schedule 18 of the LTT Act to provide that, following the UK's exit from the European Union, EU or EEA registered charities will no longer be able to claim charities relief from land transaction tax under Schedule 18 of that Act;

3. provide that co-ownership authorised contractual schemes ("**CoACS**") which are constituted, authorised and managed under the law of an EU or EEA State will no longer receive the same treatment as a UK-based CoACS following EU Exit (and amend section 36(8) of the LTT Act in consequence of this provision);

4. amend the TCM Act to remove the restriction on a Member of the European Parliament being appointed as a non-executive member of the Welsh Revenue Authority; and

5. make further technical and minor amendments to the TCM Act resulting from EU Exit.

Procedure

Affirmative.

Technical Scrutiny

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(ii) – that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made

Regulation 4 provides that a CoACS of the description in paragraph (2) of that Regulation is to be treated as not being a CoACS for the purposes of the LTT Act and TCM Act as it applies in relation to land transaction tax. The effect of the regulation is that a EU or EEA CoACS which is constituted, authorised and managed under the law of an EU or EEA State will no longer receive the same treatment a as a UK-based CoACS following EU Exit.

However, the description of the scheme specified in Regulation 4(2) is broadly equivalent to the description of such a scheme set out in section 36(6) of the LTT Act, which is currently to be regarded as a CoACS for the purposes of the LTT Act and the TCM Act as it applies in relation to land transaction tax. Regulation 6(2) omits section 36(6) of the LTT Act in consequence of Regulation 4 to resolve this contrary provision.

Regulations 4 and 6(2) therefore appears to have the effect of reversing the intention expressed in the LTT Act regarding the treatment of a particular type of EU or EEA collective investment scheme, which would not seem to be an expected exercise of the enabling powers relied upon by the Welsh Ministers, being sections 36(8) and 78(1) of the LTT Act. The Explanatory Memorandum to the Regulations explains, at paragraph 2.2:

"The provisions…are necessary to ensure the respective provisions in the LTT Act are compatible with the UK's international obligations following the UK's exit from the EU. Due to the restriction on the use of the Withdrawal Act powers (found in section 8(7)(a) of that Act), it is necessary to make these provisions using the powers conferred by the LTT Act because they may have the effect of imposing or increasing a tax liability.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Section 36(12) of the LTT Act contains a definition of "collective investment scheme", which will become redundant as a result of the amendments made by these Regulations.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No further points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 March 2019

Draft Regulations laid before the National Assembly for Wales under section 79(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

LAND TRANSACTION TAX, WALES

TAXES, WALES

The Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16) and sections 18(2), 30(6), 36(8) and 78(1) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1) ("LTTA").

Part 2 updates a reference to EU legislation in a provision in LTTA about the treatment of consideration in relation to leases.

Part 3 amends the definition of charities in Schedule 18 to LTTA.

Part 4 specifies that a co-ownership authorised contractual scheme of the description contained in regulation 4(2) is to be treated as not being a co-ownership authorised contractual scheme for the purpose of land transaction tax.

Part 5 makes various amendments to the Tax Collection and Management (Wales) Act 2016 (anaw 6) ("TCMA") in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Part 6 makes amendments to TCMA and LTTA as a consequence of the provision made by regulations 3 and 4.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ and on the Welsh Government's website at www.gov.wales.

Draft Regulations laid before the National Assembly for Wales under section 79(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

LAND TRANSACTION TAX, WALES

TAXES, WALES

The Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(2) and (3)

The Welsh Ministers make these Regulations in exercise of the powers conferred by—

(a) in relation to Part 1, the provisions mentioned in paragraphs (b) to (f);

(b) in relation to Part 2, section 18(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017(**1**) ("LTTA");

(c) in relation to Part 3, section 30(6) of LTTA;

(d) in relation to Part 4, section 36(8) of LTTA;

(**1**) 2017 anaw 1.

(e) in relation to Part 5, paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018(**1**);

(f) in relation to Part 6, section 78(1) of LTTA.

In accordance with section 79(2) of LTTA and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of these Regulations was laid before and approved by a resolution of the National Assembly for Wales.

PART 1

Introductory

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019.

(2) Subject to paragraph (3), these Regulations come into force on exit day.

(3) Part 2 and this regulation come into force on the day after the day on which these Regulations are made.

(4) In these Regulations—

"TCMA" ("*DCRhT*") means the Tax Collection and Management (Wales) Act 2016(**2**);

"LTTA" ("*DTTT*") means the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

PART 2

Leases

Amendment of Schedule 6 to LTTA

2. In paragraph 16(1)(h) of Schedule 6 to LTTA (tenants' obligations etc. that do not count as chargeable consideration), for "single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of Council Regulation (EC) No 73/2009)" substitute "basic payment scheme (that is, the scheme of income support for farmers in pursuance of Regulation (EU) No 1307/2013)".

(**1**) 2018 c. 16.
(**2**) 2016 anaw 6.

PART 3

Charities

Amendment of Schedule 18 to LTTA

3.—(1) Schedule 18 to LTTA is amended as follows.

(2) After paragraph 1(a) insert—

"(aa)paragraphs 2A to 2D make provision about the meaning of "charity",".

(3) In paragraph 2(3)(a), for "Part 1 of Schedule 6 to the Finance Act 2010 (c. 13)" substitute "paragraph 2A".

(4) After paragraph 2 insert—

"Meaning of "charity"

2A For the purpose of this Schedule, "charity" means a body of persons or trust that—

(a) is established for charitable purposes only,

(b) meets the jurisdiction condition (see paragraph 2B),

(c) meets the registration condition (see paragraph 2C), and

(d) meets the management condition (see paragraph 2D).

Meaning of "charity": jurisdiction condition

2B (1) A body of persons or trust meets the jurisdiction condition if it falls to be subject to the control of a relevant UK court in the exercise of its jurisdiction with respect to charities.

(2) A "relevant UK court" means—

(a) the High Court,

(b) the Court of Session, or

(c) the High Court in Northern Ireland.

Meaning of "charity": registration condition

2C (1) A body of persons or trust meets the registration condition if—

(a) in the case of a body of persons or trust that is a charity within the meaning of section 10 of the Charities Act 2011 (c. 25), condition A is met, and

(b) in the case of any other body of persons or trust, condition B is met.

(2) Condition A is that the body of persons or trust has complied with any requirement to be registered in the register of charities kept under section 29 of the Charities Act 2011.

(3) Condition B is that the body of persons or trust has complied with any requirement to be registered in a register corresponding to that mentioned in condition A kept under the law of Scotland or Northern Ireland.

Meaning of "charity": management condition

2D (1) A body of persons or trust meets the management condition if its managers are fit and proper persons to be managers of the body or trust.

(2) In this paragraph "managers", in relation to a body of persons or trust, means the persons having the general control and management of the administration of the body or trust.

(3) Sub-paragraph (4) applies in relation to any period throughout which the management condition is not met.

(4) The management condition is treated as met if WRA consider that—

(a) the failure to meet the condition has not prejudiced the charitable purposes of the body or trust, or

(b) it is just and reasonable in all the circumstances for the condition to be treated as met throughout the period."

(5) The amendments made by this regulation have effect in relation to land transactions with an effective date on or after exit day.

PART 4

Co-ownership authorised contractual schemes

Description of co-ownership authorised contractual scheme under section 36(8) of LTTA

4.—(1) A co-ownership authorised contractual scheme of the description in paragraph (2) is to be treated as not being a co-ownership authorised contractual scheme for the purposes of LTTA and TCMA as it applies in relation to land transaction tax.

(2) The description is that the scheme is—

(a) constituted under the law of an EEA State by contract,

(b) managed by a body corporate incorporated under the law of an EEA State, and

(c) authorised under the law of the EEA State mentioned in sub-paragraph (a) in a way which makes it, under that law, the equivalent of a co-ownership authorised contractual scheme defined in section 36(7) of LTTA.

(3) This regulation has effect in relation to any land transaction with an effective date on or after exit day.

PART 5

Amendment of TCMA

Amendment of TCMA arising from the withdrawal of the United Kingdom from the European Union

5.—(1) TCMA is amended as follows.

(2) In section 4 (disqualification for appointment as non-executive member), omit paragraph (c).

(3) In section 65(4)(a) (unjustified enrichment: further provision), for "EU legislation" substitute "retained direct EU legislation".

(4) In section 67(11) (cases in which WRA need not give effect to a claim)—

(a) omit the words from "in the circumstances" to "contrary to";

(b) in paragraph (a), before "the provisions", insert "in the circumstances in question, the charge to devolved tax is contrary to";

(c) after paragraph (a), for "or" substitute "and";

(d) for paragraph (b) substitute—

"(b) at the time the tax is charged, the rights conferred by those provisions are recognised and available in domestic law by virtue of the European Union (Withdrawal) Act 2018 (c. 16) or any provision made under that Act."

PART 6

Consequential amendments

Consequential amendments

6.—(1) In section 85(3) of TCMA (meaning of "carrying on a business"), for "Part 1 of Schedule 6 to the Finance Act 2010 (c. 13)" substitute "paragraph 2A of Schedule 18 to LTTA".

(2) In section 36 of LTTA (co-ownership authorised contractual schemes)—

(a) omit subsection (6);

(b) in subsection (12), in the definition of "operator"—

(i) omit the ", and" after paragraph (a);

(ii) omit paragraph (b) (and the remaining text ceases to be paragraph (a)).

(3) The amendments made by this regulation have effect in relation to land transactions with an effective date on or after exit day.

Name
Minister for Finance and Trefnydd, one of the Welsh Ministers
Date

Explanatory Memorandum to The Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Office of the First Minister and Cabinet Office of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

I am satisfied that the benefits justify the likely costs.

Rebecca Evans
Minister for Finance and Trefnydd
5 March 2019

PART 1

1. Description

1.1. The Regulations make a number of changes to the Welsh Tax Acts arising from the UK's departure from the European Union.

1.2. Part 2 of these Regulations will come into force on the day after the Regulations are made. The remaining parts of these Regulations will come into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") defines as 29 March 2019 at 11.00pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1. This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 to the Withdrawal Act and a selection of powers conferred by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 ("the LTT Act").

2.2. The provisions contained in Parts 3, 4 and 6 are necessary to ensure the respective provisions in the LTT Act are compatible with the UK's international obligations following the UK's exit from the EU. Due to the restriction on the use of the Withdrawal Act powers (found in section 8(7)(a) of that Act), it is necessary to make these provisions using the powers conferred by the LTT Act because they may have the effect of imposing or increasing a tax liability.

2.3. Accordingly, this instrument is being laid in draft for approval by a resolution of the Assembly.

3. Legislative background

3.1. This instrument relates to the withdrawal of the United Kingdom from the European Union and is being made under paragraph 1 of Schedule 2 to the Withdrawal Act. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

3.2. Alongside the Withdrawal Act powers the instrument is also being made under sections 18(2), 30(6), 36(8) and 78(1) of the LTT Act.

3.3. In accordance with section 79(2) of the LTT Act, an instrument containing regulations made under sections 18(2), 30(6) and 36(8) is subject to the affirmative procedure.

4. Purpose and intended effect of the legislation

4.1. **Regulation 2** – this regulation is made using the power in section 18(2) of the LTT Act. The purpose of this regulation is to update a reference in the LTT Act in relation to what is to be considered to be consideration given for a land transaction.

4.2. The change will ensure that the legislation is clear as to its intention not to include any obligation to transfer payment entitlements under the basic payment scheme as chargeable consideration for the grant of a lease.

4.3. **Regulation 3** – this regulation is made using the power in section 30(6) of the LTT Act. The purpose of this regulation is to ensure that, following the UK's exit from the European Union, all charities registered outside the United Kingdom are treated in the same manner in relation to relief from LTT under Schedule 18 to the LTT Act.

4.4. The effect of the amendment will mean that EU and EEA registered charities will no longer be able to claim relief from land transaction tax under Schedule 18 to the LTT Act. This will bring the treatment of EU and EEA charities in line with charities registered in other countries, therefore ensuring these provisions are compatible with the UK's international obligations, as required by section 116A(3) of the Government of Wales Act 2006.

4.5. It is considered that the regulation of the charities permitted to claim relief from LTT should be of a standard similar to that in the UK. Had the rules been extended to all charities wherever located in the world there would be a risk that charities established in less regulated countries and territories would be used to exploit the relief available. The relief provided to charities will therefore continue only to be available to UK-registered charities.

4.6. **Regulation 4** – this regulation is made using the power in section 36(8) of the LTT Act. The purpose of this regulation is to ensure that, following the UK's exit from the European Union, the LTT Act is applied in the same manner to all collective investment schemes constituted, managed and authorised outside the United Kingdom.

4.7. The effect of the regulation will mean that EU or EEA co-ownership authorised contractual schemes ("CoACS") which are constituted, authorised and managed under the law of an EU or EEA State will no longer receive the same treatment as a UK-based CoACS. Following the UK's exit from the European Union, only a co-ownership scheme authorised by the Financial Conduct Authority under section 261D of the Financial Services and Markets Act 2000 will receive the treatment set out in section 36 of the LTT Act.

4.8. **Regulation 5** – this regulation is made using powers in the Withdrawal Act.

Regulation 5(2)

What did any relevant EU Law do before Exit Day?

4.9. Section 4 Tax Collection and Management (Wales) Act 2016 ('TCMA') prohibits a Member of the European Parliament ('MEP') from becoming a non-executive director of the Welsh Revenue Authority ('WRA').

Why is it being changed?

4.10. As the United Kingdom will no longer be a member of the European Union on exit day, the United Kingdom will have no MEPs. It is considered highly unlikely that MEPs of other member states will apply to be members of the WRA, and as such provision is no longer required. No provision is made in relation to members of legislatures of other states.

What will it do now?

4.11. Members of the European Parliament may be appointed as non-executive members of the WRA.

Regulation 5(3)

What did any relevant EU Law do before Exit Day?

4.12. Section 65 TCMA contains a reference to EU legislation which is taken into consideration when determining the application of the unjustified enrichment rules.

Why is it being changed?

4.13. The amendment made by regulation 5(3) ensures the unjustified enrichment rules operate, in relation to EU legislation, only to the extent that the EU legislation is retained direct EU legislation (as defined by section 20 of the Withdrawal Act).

What will it do now?

4.14. The amendment ensures the unjustified enrichment rules refer to the correct body of law that will exist and have effect in the United Kingdom after exit day.

Regulation 5(4)

What did any relevant EU Law do before Exit Day?

4.15. Section 67 TCMA contains rules that permit WRA to not make a repayment of tax to a taxpayer in 8 specified situations. Case 7 is where the tax was calculated using practice generally prevailing at the time the assessment of liability was made. However, the 'practice generally prevailing' rule does not apply in cases where the tax was charged contrary to EU law, (specifically where the charge is contrary to the provisions in the Treaty on the Functioning of the European Union

which give effect to fundamental freedoms of free movement of goods, services, people and capital).

Why is it being changed?

4.16. Whilst the UK remains a member of the EU the Case 7 exclusion must be retained to be compatible with EU law. However, following exit day it will no longer be appropriate to provide an exclusion from the rules that permit the WRA to not make a repayment that is based in EU law.

What will it do now?

4.17. The amendment to the rules will ensure that the application of the Case 7 exclusion will only apply to tax charged after exit day in respect of those rights which are recognised and available in domestic law under the European Union (Withdrawal) Act 2018 and any regulations made under that Act.

4.18. **Regulation 6** – this regulation is made using the power in section 78(1) of the LTT Act and makes consequential amendments as a result of regulations 3 and 4.

5. Consultation

5.1. A short period of informal consultation was held with a limited number of tax experts in the charity and land transaction taxes sectors with whom a draft of the relevant regulations was shared. This informal consultation was to explore whether the changes proposed through these regulations would meet the policy intentions set out in Section 4 above (purpose and intended effect of the legislation), and to familiarise them with the intended legislation ahead of laying. As the changes are minor and technical and will impact few, if any, individuals, charities or corporate entities a wider public consultation was not considered necessary.

5.2. A minor change was considered necessary to regulation 3 as a result of the informal consultation.

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment will address only Regulations 3 (meaning of charity), and 4 (description of a co-ownership authorised contractual scheme). The other regulations are minor or technical amendments (regulations 2 and 5), or are consequential to regulations 3 and 4 (regulation 6).

The impact of the changes effected by regulations 3 and 4 are limited. This regulatory impact assessment is therefore provided in an abridged form.

Options

The LTT Act contains rules that provide specific treatment in relation to UK charities and co-ownership authorised contractual schemes ("CoACS"). In relation to charities entering into land transactions UK, EU and EEA charities can, subject to conditions, claim relief from land transaction tax. In relation to CoACS, section 36(6) of the LTT Act affords the same treatment to EU and EEA CoACS as the provision does to UK CoACS. However, once the UK leaves the EU, it will be necessary to ensure that more favourable tax treatment is not given to entities in certain countries and not to others.

Therefore, not making regulations 3 and 4 (and therefore continuing to offer preferential treatment to EU and EEA entities) was not a realistic option as the devolved tax system must operate in a way which is compatible with the UK's international obligations. However, two options were possible; the first to limit the treatment to UK entities alone, or the alternative to extend the treatment to entities wherever located in the world.

The first option is preferred because of the importance of regulation of the entities being given the favourable tax treatment. Had the alternative option been pursued then, by extending the rules to all such entities wherever located in the world, there would be a risk to land transaction tax revenues. That risk would come from entities established in less regulated countries and territories seeking to exploit the tax treatment when that treatment should only be available only to those regulated to the standard required in the UK.

Impact of the preferred option

The effect of these regulations will mean EU and EEA charities and CoACS will be treated in the same manner as charities and CoACS established and registered elsewhere (those established and registered in the UK will continue to benefit from the favourable tax treatment).

As a result, the regulations may have the effect of increasing or imposing tax where it previously was not imposed.

Following the UK leaving the EU, EU and EEA registered charities will no longer be able to claim relief from land transaction tax when they buy property in Wales for charitable purposes. The number of land transactions entered into by

charities from outside the UK will be very small, with potentially no such land transactions in Wales. Therefore, the consequences of this amendment are unlikely to impact on EU and EEA charities. The amendments in these regulations will have no impact on a UK charity being able to claim relief from land transaction tax where that UK charity meets the relevant conditions.

In relation to EU and EEA CoACS the position is similar to that for EU and EEA charities. Under section 36 of the LTT Act, a CoACS is treated (for LTT purposes) as though it is a company, and the rights of the participants in the CoACS as though they were shares in that company. Absent this rule the obligation to make the land transaction return and pay the tax will fall on the individual participants in the scheme. Although the effect of this regulation will not result in any additional tax being payable on the transaction, liability to pay the tax and submit the return will shift from the operator of the scheme to the individual participants. This may result in increased costs for the scheme as making land transaction tax returns may become more complex and, potentially, more expensive.

Following the UK leaving the EU those non-UK entities will no longer benefit from the treatment accorded to similar UK entities. As the EU and EEA CoACS will no longer be treated as though they are a company (and the interests of the participants treated as though they were shares in that company) this may lead to liability to land transaction tax being incurred when an interest in land owned by the participants is sold. As a result of the changes made the participants in the CoACS will be treated as holding undivided shares in the properties that are part of the scheme. Therefore, when a participant sells an interest in the scheme they will be selling the interest they own in each and every property owned within the scheme and each such land transaction will, subject to notification rules, need to be notified to the Welsh Revenue Authority.

An example is helpful to illustrate this change of treatment. An EU CoACS with 100 participants owns 10 non-residential properties (4 within Wales) worth £50 million (and each individual property is worth £5 million). One of the participants with an interest of 1% in the scheme sells their interest to another person (be they already a participant in the scheme or not). For land transaction tax purposes, the former participant is treated as selling their interest in each of the separate Welsh properties. That is, that they have entered into a land transaction to sell the 4 separate interests in the Welsh property to the new participant. The new participant will need to make a land transaction return showing the details of the 4 properties and the consideration given for the land transaction ((4x£5million)x1%= £200,000), as the sale of the interests in the individual properties form a linked transaction.

If the CoACS was a UK scheme then the continued deemed treatment of the scheme as a company, and the interests of the participants as shares, there would be no land transaction to report to the Welsh Revenue Authority.

As noted in the Explanatory Memorandum the actual effect of these changes will be small or non-existent given that there will be few if any charities registered outside the UK acquiring land and buildings in Wales. UK, EU and EEA CoACS

were only given the deemed company tax treatment under stamp duty land tax when the Finance Act 2016 came into force on 15 September 2016. This change in the rules was also associated with the introduction at the same time with a 'seeding relief' that has not been introduced in Wales in land transaction tax. It is, again, considered unlikely that there have been, or will be in the near future, many, or any, CoACS, or their participants that will be affected by these changes.

The informal consultation held with a limited number of tax experts in the charity and land transaction taxes sectors explored whether the changes proposed through these regulations would meet the policy intentions set out in Section 4 above (purpose and intended effect of the legislation). As the changes are minor and technical and will impact few, if any, individuals, charities or corporate entities a wider public consultation was not considered necessary.

Specific Impact Assessments

Equality Impact Assessment: The regulations are considered to comply with the requirements of the Equality Act 2010.

Protected Groups: The regulations are considered not to have a differential impact in relation to any of the protected groups (age, disability, gender, transgender, marriage and civil partnership, pregnancy and maternity, race, religion and belief or non-belief, sexual orientation).

Human Rights: The regulations are considered to be compatible with the Human Rights Act 1998.

United Nations Conventions on the Rights of the Child: The regulations are not considered to directly impact on children.

Impact on the Welsh Language: The regulations are considered to comply with the Welsh Language Standards.

Sustainable Development: The regulations are considered not to have a detrimental impact on sustainable development objectives.

Health and Wellbeing: The regulations are considered not to have a detrimental impact on health and wellbeing objectives.

Rural Proofing: The regulations are considered not to have a detrimental impact on rural communities.

Impact on Privacy: The regulations are considered protect individuals, companies and organisations rights

Impact on the Voluntary Sector: The UK voluntary sector will not be detrimentally impacted by these regulations. EU and EEA charities where they meet the necessary conditions, however, will no longer be in a position to claim relief from land transaction tax.

Impact on Small Business: The regulations are considered not to have a detrimental impact on small businesses.

Competition Assessment

The competition assessment does not consider the impact of these regulations on charities.

In relation to the changes made to limit tax favourable treatment to UK CoACS, competition issues will potentially arise where EU and EEA entities will no longer be afforded the same treatment as UK CoACS. The changes essentially place the EU and EEA entities in the same position as similar entities elsewhere in the world. Any competition issues that arise are therefore not between UK entities, but rather between the UK and the rest of the world, now to also include the EU and EEA as a result of the UK leaving the EU.

Post Implementation Review

The LTT Act places a statutory obligation on the Welsh Minsters to make arrangements that an independent review of LTT is conducted before the end of 6 years following the date on which the Act received Royal Assent. That review must therefore be completed by 25 May 2023.

However, no specific requirements are considered necessary to specifically conduct a post implementation review for the changes made through these regulations.

Annex A
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

The statements below apply to the changes made using the powers under the European Union (Withdrawal) Act 2018, namely Part 5 of the regulations. The other regulations are made using powers within the Welsh Tax Acts and such statements in relation to those regulations are not required.

1. Sifting statement(s)

Not applicable.

2. Appropriateness statement

The Minister for Finance and Trefnydd, Rebecca Evans has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019 does no more than is appropriate.

This is the case because the regulations are technical in nature and designed to address failures of retained EU law to operate effectively after exit day.”

3. Good reasons

The Minister for Finance and Trefnydd, Rebecca Evans has made the following statement regarding use of legislative powers in the European Union (Withdrawal) 2018 Act:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is because the instrument makes a number of minor technical changes to the Welsh Tax Acts to reflect the UK’s departure from the EU.”

4. Equalities

The Minister for Finance and Trefnydd, Rebecca Evans has made the following statement:

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

The Minister for Finance and Trefnydd, Rebecca Evans, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Rebecca Evans, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable.

7. Legislative sub-delegation

Not applicable.

8. Urgency

Not applicable.

Agenda Item 4.23

SL(5)370 – The Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to the Seed Potatoes (Wales) Regulations 2016 (S.I. 2016/106 W.52). Those Regulations control the production with a view to marketing, the certification and the marketing of seed potatoes in Wales, other than those intended for export outside the European Union.

Procedure

Affirmative

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Regulation 2(12) substitutes references to the UK for references to the [European] Union in Schedule 1 to the 2016 Regulations. The Welsh text of 2(12) accurately reflects the English. However, there appears to have been an error in the Welsh text of paragraph 8 of Schedule 1 to the 2016 Regulations, so that the words 'yr Undeb' (the Union) does not in fact appear. Consequently, it cannot be replaced by 'y DU' (the UK) in accordance with regulation 2(12). 'Y DU' should, therefore, be an insertion in paragraph 8, and not a substitution. [Standing Order 21.2(vi) – defective drafting]

2. Regulation 2(15) states that Schedule 4 is amended in accordance with paragraphs 15 to 17. The correct cross-reference would be to paragraphs (16) to (18). [Standing Order 21.2(vi) – defective drafting]

3. The amendments made by paragraphs (16) to (18) of regulation 2 add references to UK grades of seed potato to existing references to EU grades. The changes in the Welsh text have been expressed as substitutions of UK and EU grades for EU grades. However, the way it has been done in regulation 2(17)(b)(iii) has resulted in the loss of Union grade S. [Standing Order 21.2(vi) – defective drafting]

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

The following point is identified for reporting under Standing Order 21.3(ii) in respect of this instrument – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

As is explained in paragraph 4.5 of the Explanatory Memorandum, these Regulations contain transitional provisions that permit seed potatoes from the EU and Switzerland to continue to be marketed etc. for twelve months after the amendments take effect on exit day. Those transitional provisions are removed by regulation 3 at the end of that period.

Government Response

Points 1 and 3 made by the Committee are noted by the Welsh Government. It is accepted that there is an error in the Welsh text of paragraph 8 of Schedule 1 to the 2016 Regulations, and that there is also an error in regulation 2(17)(b)(iii) which has resulted in the loss of "Union grade S' in the Welsh text. Due to the need for this statutory instrument to come into force on exit day, and the limited time available, it is proposed a further SI be brought forward as soon as practicable to amend the Welsh text to address these issues.

Point 2 made by the Committee is noted by the Welsh Government. It is accepted that the cross referencing in regulation 2(15) is incorrect. These references will be updated by way of a correction slip following publication.

Legal Advisers
Constitutional and Legislative Affairs Committee
11 March 2019

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

SEEDS, WALES

The Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to the Seed Potatoes (Wales) Regulations 2016 (S.I. 2016/106 W.52).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

SEEDS, WALES

The Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(2) and (3)

The Welsh Ministers, in exercise of the powers conferred by paragraph 1(1) of Schedule 2, and paragraph 21 of Schedule 7, to the European Union (Withdrawal) Act 2018(**1**), make the following Regulations.

In accordance with paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018 a draft of this instrument has been laid before the National Assembly for Wales and approved by a resolution of the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019.

(2) These Regulations, apart from regulations 3 and 4, come into force on exit day.

(3) Regulations 3 and 4 come into force on the day one year after the day on which exit day falls.

(**1**) 2018 c.16. See section 20(1) of that Act for the definition of "devolved authority".

(4) These Regulations apply in relation to Wales.

Amendment to the Seed Potatoes (Wales) Regulations 2016 consequent on the withdrawal of the United Kingdom from the European Union

2.—(1) The Seed Potatoes (Wales) Regulations 2016 are amended as follows.

(2) In regulation 2—

(a) in the definition of "basic seed potatoes", in paragraph (b), for the words from "in accordance" to the end substitute—

", stating that the potatoes were certified as basic seed potatoes and the grade, in accordance with—

(i) in the case of seed potatoes produced in the United Kingdom, the relevant seed potatoes regulations;

(ii) in the case of seed potatoes produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to paragraphs 2, 5, 7, 9, 10 and 11 of Part 1 of Schedule 2;

(iii) in the case of seed potatoes produced in a member State or Switzerland, Article 13(1)(a) of the Directive;";

(b) in the definition of "category" omit the words "in accordance with the Swiss trade agreement";

(c) in the definition of "certification" in paragraph (b), for the words from "in accordance" to the end substitute—

"in accordance with—

(i) in the case of seed potatoes produced in the United Kingdom, the relevant seed potatoes regulations;

(ii) in the case of seed potatoes produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to regulation 10(2) and (3);

(iii) in the case of seed potatoes produced in a member State or Switzerland, the Directive;";

(d) in the definition of "certified seed potatoes" in paragraph (b) for the words from "in accordance" to the end substitute—

", stating that the potatoes were certified as certified seed potatoes and the grade, in accordance with—

(i) in the case of seed potatoes produced in the United Kingdom, the relevant seed potatoes regulations;

(ii) in the case of seed potatoes produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to paragraphs 3, 5, 7, 9, 10 and 11 of Schedule 2;

(iii) in the case of seed potatoes produced in a member State or Switzerland, Article 13(1)(a) of the Directive;";

(e) after the definition of "Common Catalogue" insert—

""Crown Dependency" *("Tiriogaeth Ddibynnol y Goron")* means the Isle of Man and any of the Channel Islands;

(f) after the definition of "genetically modified" insert—

""the GMO regulations*" ("y Rheoliadau GMO")* means—

(a) in relation to England, the Genetically Modified Organisms (Deliberate Release) Regulations 2002(**1**);

(b) in relation to Wales, the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002(**2**);

(c) in relation to Scotland, the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002(**3**);

(d) in relation to Northern Ireland, the Genetically Modified Organisms (Deliberate Release) Regulations (Northern Ireland) 2003(**4**);";

(g) for the definition of "grade" substitute—

""grade" *("mae "gradd")* includes the United Kingdom grade;";

(h) for the definition of "National List" substitute—

(**1**) S.I. 2002/2443, amended by S.I. 2004/2411, 2018/575.
(**2**) S.I. 2002/3188 (W. 304), amended by S.I. 2005/2759, 2013/755 (W. 90).
(**3**) S.S.I. 2002/541, amended by S.S.I. 2004/439, 2015/100.
(**4**) S.R. 2003 No. 167.

""National List" *("Rhestr Genedlaethol")* means a list of varieties of potato species prepared and published in accordance with regulation 3 of the National Lists Regulations;";

(i) in the definition of "official document", in paragraph (b), for the words from "requirements of" to the end substitute—

"requirements of—

(i) in the case of seed potatoes produced in the United Kingdom, the relevant seed potatoes regulations;

(ii) in the case of seed potatoes produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to the requirements of Part 2 of Schedule 2;

(iii) in the case of seed potatoes produced in a member State or Switzerland, Article 13(1)(b) of the Directive;";

(j) in the definition of "official label" in paragraph (b), for the words from " requirements of" to the end substitute—

"requirements of—

(i) in the case of seed potatoes produced in the United Kingdom, the relevant seed potatoes regulations;

(ii) in the case of seed potatoes produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to the requirements of Part 1 of Schedule 2;

(iii) in the case of seed potatoes produced in a member State or Switzerland, Article 13(1)(a) or 18(f) of the Directive or Article 9 of the Decision;";

(k) in the definition of "pre-basic seed potatoes" in paragraph (b), for the words "in accordance" to the end substitute—

", stating that the potatoes were certified as pre-basic seed potatoes and the grade, in accordance with—

(i) in the case of seed potatoes produced in the United Kingdom,

the relevant seed potatoes regulations;

(ii) in the case of seed potatoes produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to paragraphs 1, 5, 6, 9, 10 and 11 of Part 1 of Schedule 2;

(iii) in the case of seed potatoes produced in a member State or Switzerland, Article 18(f) of the Directive;";

(l) for the definition of "seed potatoes of a conservation variety" substitute—

""seed potatoes of a conservation variety" *("tatws hadyd o amrywogaeth gadwraeth")* means any variety of seed potatoes listed as a conservation variety in the National List;" ;

(m) in the definition of "seed potatoes produced outside Wales" in paragraph (b) omit "other than the United Kingdom";

(n) after the definition of "seed potatoes produced outside Wales" insert—

""the seed potatoes regulations" *("y rheoliadau tatws hadyd")* means—

(a) in relation to England, the Seed Potatoes (England) Regulations 2015;

(b) in relation to Scotland, the Seed Potatoes (Scotland) Regulations 2015(**1**);

(c) in relation to Northern Ireland, the Seed Potatoes Regulations (Northern Ireland) 2016(**2**);

and "the relevant seed potatoes regulations" *("y rheoliadau tatws hadyd perthnasol")*, in relation to any constituent part of the United Kingdom, means the seed potatoes regulations applicable in relation to that part;";

(o) in the definition of "test and trial seed potatoes" in paragraph (b), for the words from "accordance with Article 9 of the Decision" substitute—

" accordance with—

(i) in the case of seed potatoes produced in the United Kingdom,

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(**1**) S.S.I. 2015/395, amended by S.S.I. 2016/68, 434.
(**2**) S.R. 2016 No. 190, amended by S.R. 2017 No. 155.

the relevant seed potatoes regulations;

(ii) in the case of seed potatoes produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to paragraphs 4, 5, 8, 9, 10 and 11(c) of Part 1 of Schedule 2;

(iii) in the case of seed potatoes produced in a member State or Switzerland, Article 9 of the Decision";

(p) for the definition of "Union grade" substitute—

""Union grade" *("gradd yr Undeb")* means, in relation to seed potatoes produced in a member State or Switzerland —

(a) in the case of pre-basic seed potatoes, Union grade PBTC or Union grade PB, the minimum conditions for which are set out in Articles 2 and 3 of, and Annex 1 to, Directive 2014/21/EU(**1**);

(b) in the case of basic seed potatoes, Union grade S, Union grade SE, or Union Grade E, the minimum conditions for which are set out in Article 1 of, and Annex 1 to, Directive 2014/20/EU(**2**);

(c) in the case of certified seed potatoes, Union grade A or Union grade B, the minimum conditions for which are set out in Article 2 of, and Annex 2 to, Directive 2014/20/EU;";

(q) after the definition of "Union grade" insert—

""United Kingdom grade" *("gradd y Deyrnas Unedig")* means—

(a) in relation to seed potatoes produced in Wales, the United Kingdom grade determined in accordance with Schedule 4 during certification, this being—

(i) in the case of pre-basic seed potatoes, UK grade PBTC or UK grade PB;

(ii) in the case of basic seed potatoes, UK grade S, UK grade SE or UK grade E;

(**1**) OJ No L 38, 7.2.2014, p. 39.
(**2**) OJ No L 38, 7.2.2014, p. 32.

(iii) in the case of certified seed potatoes, UK grade A or UK grade B;

(b) in relation to seed potatoes produced in the United Kingdom other than in Wales, the United Kingdom grade determined in accordance with the relevant seed potatoes regulations;";

(r) in paragraph (2), omit the words from "in accordance" to the end;

(s) omit paragraph (4).

(3) In regulation 4, for "European Union" substitute "United Kingdom".

(4) In regulation 5, in paragraph 3(b), for the words from "accordance with"—

" accordance with—

(i) in the case of seed potatoes produced in the United Kingdom, the relevant seed potatoes regulations;

(ii) in the case of seed potatoes produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to regulation 8;

(iii) in the case of seed potatoes produced in a member State or Switzerland, Article 6(1)(a) of the Directive";

(5) In regulation 6—

(a) in paragraph (3), for the words from the beginning to "Directive 2008/62/EC" substitute "Where the quantities specified in Article 14 of Directive 2008/62/EC(**1**) would otherwise be likely to be exceeded";

(b) after paragraph (3) insert—

"(3A) For the purposes of paragraph (3), Article 14 of Directive 2008/62/EC is to be read as if—

(a) in the first paragraph, in the first sentence—

(i) the words "Each Member State shall ensure that" were omitted;

(ii) for the words "does not exceed" there were substituted "may not exceed";

(iii) for the reference to "that Member State" there were substituted "the United Kingdom";

(**1**) OJ No L 162, 21.6.2008, p. 13.

(b) in the second paragraph—

(i) in the first sentence, for the reference to "each Member State" there were substituted "the United Kingdom";

(ii) for the references to "the Member State" in both places there were substituted "the United Kingdom".

".

(6) In regulation 8(2), for the words from "the Food and Feed Regulation" to the end substitute—

"—

(a) the Food and Feed Regulation;

(b) the GMO regulations; or

(c) before exit day, Part C of the Deliberate Release Directive".

(7) In regulation 9—

(a) in paragraph (2)—

(i) in sub-paragraph (a), for "in excess of that permitted by Article 7 of the Decision" substitute "which exceeds the greater of 0.1% of the annual number of seed potatoes used in the United Kingdom or such quantity as the Welsh Ministers considers is sufficient to sow 10 hectares";

(ii) in sub-paragraph (b), for the words from "the Food and Feed Regulation" to the end substitute—

"—

(i) the Food and Feed Regulation;

(ii) the GMO regulations; or

(iii) before exit day, Part C of the Deliberate Release Directive";

(b) in paragraph (6)(b), omit "or the Common Catalogue";

(c) in paragraph (8)(b), for "member State" substitute "country".

(8) In regulation 11(3)(b), for the words from "pursuant to the Directive" to the end substitute—

", in respect of the marketing of potatoes of that category, pursuant to—

(i) in the case of seed potatoes produced in the United Kingdom, the relevant seed potatoes regulations;

(ii) in the case of seed potatoes produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having

equivalent effect to sub-paragraph (a);

(iii) in the case of seed potatoes produced in a member State or Switzerland, the Directive".

(9) In regulation 14(2)(b), for the words from "accordance with" to the end substitute—

"accordance with—

(i) in the case of seed potatoes produced in the United Kingdom, the relevant seed potatoes regulations;

(ii) in the case of seed potatoes produced in a Crown Dependency, legislation recognised by the Welsh Ministers as having equivalent effect to sub-paragraph (a);

(iii) in the case of seed potatoes produced in a member State or Switzerland, Article 11(1) of the Directive".

(10) In regulation 16—

(a) in the heading, for "from outside the European Union" substitute "imported into Wales";

(b) renumber the existing text as paragraph (1);

(c) in paragraph (1)—

(i) at the start insert the words "Subject to paragraph (2),";

(ii) omit the words "from a country outside the European Union";

(d) after paragraph (1), insert—

"(2) Paragraph (1) does not apply to any person marketing more than 2 kilograms of seed potatoes that have been imported into Wales from—

(a) within the British Islands;

(b) a member state or Switzerland.".

(11) After regulation 23 insert—

"Transitional provision for official labels on exit day

23A. A label pre-printed before exit day which at the date on which it was printed was an official label for the purposes of these Regulations is to be treated as an official label for the purposes of any use of that label before the end of the period of one year beginning with the day after the day on which exit day falls.".

(12) In Schedule 1 in paragraphs 5, 6, 8 and 10, for "Union", in each place where it occurs, substitute "UK".

(13) In Schedule 2—

(a) in paragraph 6(a), for "member State" substitute "country";

(b) in paragraph 7—

(i) in sub-paragraph (a), for "EU" substitute "UK";

(ii) in sub-paragraph (b)(i), for "member State" substitute "country";

(c) in paragraph 8(b)(i), for "member State" substitute "country";

(d) in paragraph 9—

(i) for "required by" substitute "specified in";

(ii) at the end, insert "read as if, in point (a), for "EC" there were substituted "UK"";

(e) in paragraph 11, for "Union", in each place where it occurs, substitute "UK".

(14) In Schedule 3—

(a) in the headings to Parts 1 and 2 for "Union" substitute "UK";

(b) in the table in Part 3, in column 2, for "Union", in each place where it occurs, substitute "UK".

(15) Schedule 4 is amended in accordance with paragraphs 15 to 17.

(16) In Part 1—

(a) in the paragraph preceding Table 1, for "Union" substitute "United Kingdom";

(b) in Table 1—

(i) in the heading to column 1, for "Union" substitute "UK";

(ii) in the row relating to grade "PB", in column 2, in paragraph (1)(b), after "graded as" insert "UK grade PB,".

(17) In Part 2—

(a) in the paragraph preceding Table 2, for "Union" substitute "United Kingdom";

(b) in Table 2—

(i) in the heading to column 1, for "Union" substitute "UK";

(ii) in the row relating to grade "S", in column 2, after "graded as" insert "UK grade S or";

(iii) in the row relating to grade "SE", in column 2, after the word "graded" insert " "UK grade S, UK grade SE,";

(iv) in the row relating to grade "E", in column 2—

(aa) in paragraph (1)(a), after "graded as" insert "UK grade S, UK grade SE,";

(bb) in paragraph (1)(b),, after "graded as" insert "UK grade S, UK grade SE, UK grade E ".

(18) In Part 3—

(a) in Table 3—

(i) in the heading to column 1, for "Union" substitute "UK";

(ii) in the row relating to grade "A", in column 2—

(aa) after "graded" insert "as UK grade A or";

(iii) in the row relating to grade "B", in column 2—

(aa) after the first instance of "graded" insert " as UK grade A or";

(bb) after the second instance of "graded" insert " as UK grade B or".

(19) In the heading to Schedule 6, for "other than a member state" substitute "outside the British Islands".

Marketing of seed potatoes produced in a member State or Switzerland

3.—(1) The Seed Potatoes (Wales) Regulations 2016 as amended by regulation 2 are amended as follows.

(2) In regulation 2—

(a) in the definition of "basic seed potatoes", in paragraph (b), omit sub-paragraph (iii);

(b) in the definition of "certification", in paragraph (b) omit sub-paragraph (iii);

(c) in the definition of "certified seed potatoes", in paragraph (b) omit sub-paragraph (iii);

(d) in the definition of "official document", in paragraph (b) omit subparagraph (iii);

(e) in the definition of "official label", in paragraph (b), omit sub-paragraph (iii);

(f) in the definition of "pre-basic seed potatoes" in paragraph (b), omit sub-paragraph (iii);

(g) in the definition of "seed potatoes produced outside Wales" omit paragraphs (b) and (c);

(h) in the definition of "test and trial seed potatoes", in paragraph (b), omit subparagraph (iii);

(3) In regulation 11(3)(b), omit sub-paragraph (iii);

(4) In regulation 14(2)(b), omit sub-paragraph (iii);

(5) In regulation 16, omit paragraph (2)(b).

(6) In Schedule 1, in paragraph 3(a) omit "or the Common Catalogue".

Marketing of seed potatoes produced in a member State or Switzerland: saving provision

4.—(1) In the case of seed potatoes—

(a) produced in a member State or Switzerland, and

(b) imported into Wales before the coming into force of regulation 3,

the Seed Potatoes (Wales) Regulations 2016 continue to have effect as if the amendments made by regulation 3 were not in force.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers
5 March 2019

Explanatory Memorandum to the Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019.

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
5 March 2019

1 PART 1

1. Description

1.1 The Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019 amend the Seed Potatoes (Wales) Regulations 2016. They address deficiencies in domestic legislation on seed potatoes arising from the withdrawal of the United Kingdom from the European Union to make them operable after EU exit.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) (the "2018 Act") in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union and to make associated provision.

2.2 This instrument is subject to the affirmative procedure in accordance with paragraph 1(9) of Schedule 7 to the 2018 Act.

2.3 Aside from regulations 3 and 4, this instrument comes into force on "exit day". Section 20(1) of the European Union (Withdrawal) Act 2018 defines "exit day" as 29 March 2019 at 11.00pm. Regulations 3 and 4 come into force on the day one year after the day on which exit day falls.

3 Legislative background

3.1 This instrument is being made using the power in paragraph 1(1) of Schedule 2 to and paragraph 21 of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4 Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 Council Directive 2002/56/EC prescribes marketing standards for seed potatoes to ensure minimum quality standards and traceability for marketed seed and propagating material.

4.2 Directive 2002/56/EC is implemented in Wales by The Seed Potatoes (Wales) Regulations 2016 (S.I. 2016/106 (W. 52)), which have been amended. Those Regulations control the production with a view to

marketing, the certification and the marketing of seed potatoes in Wales, other than those intended for export outside the European Union.

Why is it being changed?

4.3 The technical changes made by the instrument are necessary to ensure that the Seed Potatoes (Wales) Regulations 2016 continue to operate effectively and to ensure continuity of supply and marketing of seed potatoes from the EU and Switzerland for an interim period of one year after that withdrawal.

What will it now do?

4.4 This instrument will ensure that the Seed Potatoes (Wales) Regulations 2016 continue to operate effectively after we leave the EU. The instrument makes no policy changes other than those necessary to ensure such continued operation.

4.5 In the fields of the marketing of seed potatoes the changes made by this instrument include removing references to the Commission, Community and Member States, replacing references to "third countries" and removing reporting obligations to the Commission. To assure continuity in supplies of seed potatoes this instrument provides for a one year transitional period during which time EU seed potatoes and seed potatoes from Switzerland will continue to be recognised for production and marketing in Wales and, to avoid financial loss, permit a one year period for existing stocks of pre-printed official EU certification labels to be used up.

4.6 In the field of seed potatoes, further changes made by this instrument include a definition for Crown Dependencies (CDs) and a provision allowing the Welsh Ministers to recognise CDs legislation, where appropriate, as having equivalent effect to Wales marketing legislation to allow CDs access to the UK internal market.

5 Consultation

5.1 As there is no substantive policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to continue to operate effectively after the withdrawal of the United Kingdom from the European Union.

6 Regulatory Impact Assessment (RIA)

6.1 An RIA has not been conducted as these are technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no substantive policy changes are being made via this statutory instrument. As this instrument relates to maintaining the substance of existing legislation after the withdrawal of the

UK from the EU, there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

6.2 The temporary period for accepting EU seed potatoes will constrain the impact on small businesses (employing up to 50 people). This instrument largely maintains the status quo insofar as that is possible after the UK's withdrawal from the EU and therefore does not introduce new duties or burdens on business.

7 Annex 1
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because all changes being made are technical and do no more than is strictly necessary to ensure that the Regulations function correctly once the UK has left the EU."

2. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". This is because the provisions ensure that protections provided by Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019 continue to be operable after the UK leaves the European Union."

3. Equalities

3.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

3.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

3.3 Little or no impact on equalities is expected.

4. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

5. Criminal offences

Not applicable / required.

6. Legislative sub-delegation

Not applicable / required.

7. Urgency

Not applicable / required.

Agenda Item 4.24

SL(5)374 – The Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

Council Directive 2000/29/EC ("the Plant Health Directive") establishes the EU plant health regime. The Plant Health Directive contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce.

These Regulations correct deficiencies in the following domestic legislation which implements EU Directive 2000/29/EC on measures to protect (forestry) plant health arising in consequence of the UK's withdrawal from the EU in a 'no deal' scenario:

- Plant Health (Forestry) Order 2005
- Forest Reproductive Material (Great Britain) Regulations 2002
- Plant Health (Fees) (Forestry) (Wales) Regulations 2019

Procedure

Affirmative.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:-

1. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

    - The preamble to these Regulations does not correctly cite the enabling powers. The first power cited is Section 8(1) of the European Union (Withdrawal) Act 2018 which is a Secretary of State power, the citation is therefore incorrect. The second power cited is Schedule 2 to the European Union (Withdrawal) Act 2018, however for the sake of clarity this citation should be more precise in referencing the specific power within that Schedule.

2. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

    - In the words preceding Regulation 2, "Material" has been left out of the reference to the Forest Reproductive *Material* (Great Britain) Regulations 2002 [*emphasis added*].

3. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

    - Regulation 4(a) of these Regulations revokes the definitions of "solid fuel wood" and "OPM protected zone" from Article 2(1) of the Plant Health (Forestry) Order 2005. However, these terms only apply in relation to England and Scotland (they were inserted into the 2005 Order by the

Plant Health (Forestry) (Amendment) (England and Scotland) Order 2016 and the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2018 respectively).

4. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

   - Regulation 4(e) of these Regulations revokes Article 2(5) of the Plant Health (Forestry) Order 2005. However, paragraph (5) only applies in relation to England and Scotland (it was inserted into the 2005 Order by the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2016).

5. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

   - In Regulation 18(c) there should be an "or" included as part of the words being inserted. The wording of the Regulation should read "in paragraph (B1)(a) *or*" [*emphasis added*].

6. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

   - Regulation 30 contains two references to Article 6(1) of the Plant Health (Forestry) Order 2005. However, Article 6(1) is revoked by Regulation 10(c) of these Regulations. It is therefore not clear which provision is being referred to.

7. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

   - Regulation 30 contains two references to Article 12(1) of the Plant Health (Forestry) Order 2005. However, Article 12(1) is revoked by Regulation 18(b) of these Regulations. It is therefore not clear which provision is being referred to.

8. **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

   - Regulation 50(b) contains a typographical error. The second line should start with "place" rather than "pace".

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 March 2019

Draft Regulations laid before the National Assembly for Wales under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

PLANT HEALTH, WALES

The Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of, and Schedule 2 to, the European Union (Withdrawal) (Act) 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to the Forest Reproductive (Great Britain) Regulations 2002, the Plant Health (Forestry) Order 2005 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019.

The Welsh Ministers' Code of Practice on the carrying out of regulatory impact assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before the National Assembly for Wales under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

PLANT HEALTH, WALES

The Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(2)

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 8(1) of, and Schedule 2 to, the European Union (Withdrawal) Act 2018(**1**).

In accordance with paragraph 1(8) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by the National Assembly for Wales.

PART 1

Introductory

Title, commencement and application

1.—(1) The title of these Regulations is the Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

(**1**) 2018 c. 16.

(3) These Regulations apply in relation to Wales.

PART 2

Amendment of the Forest Reproductive (Great Britain) Regulations 2002

2.—(1) The Forest Reproductive Material (Great Britain) Regulations 2002(**1**) are amended as follows.

(2) Regulation 2 is amended in accordance with paragraphs (3) and (4).

(3) In paragraph (2)—

(a) after the definition of "approved basic material" insert—

""approved non-EU third country" means a country listed in Part 1A of Schedule 13;";

(b) omit the definition of "Council Decision 2008/971/EC";

(c) after the definition of "crossing design" insert—

""the Department" has the meaning given in the NI Regulations;";

(d) omit the definition of "EC classification";

(e) omit the definition of "EU-approved third countries";

(f) in the definition of "genetically modified organism", for the words from "Article 2(1)" to the end substitute "section 106 of the Environmental Protection Act 1990(**2**)";

(g) in the definition of "Master Certificate"—

(i) in paragraph (b), for the words from "official body for Northern Ireland" to the end substitute "Department in accordance with regulation 13 of the NI Regulations";

(ii) in paragraph (d)—

(aa) for "EU-approved" substitute "approved non-EU";

(bb) for the words from "a relevant" to the end substitute "the Department in accordance with the NI Regulations";

(iii) in paragraph (e), for "an official body of a member State" substitute "the Department";

(**1**) S.I. 2002/3026, relevant amending instruments are S.I. 2006/2530, 2011/1043, 2013/755 (W. 90), and S.I. 2019/xxx (W.xx).

(**2**) 1990 c. 43; section 106 was amended in relation to England by the Human Fertilisation and Embryology Act 2008 (c. 22), section 60 and by S.I. 2002/2443 and 2009/2232.

(h) omit the definition of "the Mediterranean climatic region";

(i) after the definition of "National Register" insert—

""the NI Regulations" means the Forest Reproductive Material Regulations (Northern Ireland) 2002(**1**);";

(j) in the definition of "official body"—

(i) omit paragraph (b);

(ii) in paragraph (c), after "in relation to" insert "an approved non-EU third country or";

(k) omit the definition of "plant passport";

(l) in the definition of "region of provenance", for "in accordance with Article 9 of the Directive by another official body" substitute "pursuant to regulation 5 of the NI Regulations by the Department";

(m) for the definition of "third countries" substitute—

""third country" means a country or territory outside the United Kingdom;".

(4) Omit paragraphs (4A) to (6).

(5) In regulation 4—

(a) in paragraph (1)(c), omit "subject to paragraph (1A)";

(b) omit paragraph (1A).

(6) In regulation 7(4)—

(a) omit sub-paragraph (b);

(b) after sub-paragraph (b) insert—

"(c) as regards Wales, consent to the marketing of the basic material has been given by the Welsh Ministers in accordance with the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002(**2**).".

(7) In regulation 14(4)—

(a) in sub-paragraph (a)—

(i) in paragraph (ii)—

(aa) for "any other official body of a member State" substitute "the Department";

(**1**) S.R. 2002 No. 404.

(**2**) 2002/3188 (W. 304), amended by S.I. 2005/1913 (W. 156); there are other amending instruments but none is relevant. The functions of the National Assembly for Wales under these Regulations are vested in the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(bb) for "the official body in accordance with Article 10 of the Directive" substitute "the Department in accordance with regulation 7 of the NI Regulations";

(ii) in paragraph (iii), for "an EU-approved" substitute "a member State, an approved non-EU";

(b) in sub-paragraph (b), after paragraph (i) insert—

"(ia) in the case of forest reproductive material derived from basic material approved by the Department, has the meaning given in regulation 7(5) of the NI Regulations;".

(8) In regulation 17—

(a) in paragraph (1)—

(i) in sub-paragraph (b)—

(aa) omit "or another member State";

(bb) for "Article 14 of the Directive" substitute "regulation 19 of the NI Regulations";

(ii) after sub-paragraph (b) insert—

"(ba) in the case of forest reproductive material produced in a member State and imported into Wales, it has met the requirements as to entry into Wales set out in regulation 25;";

(iii) in sub-paragraph (c), for "EU-approved" substitute "approved non-EU";

(iv) omit sub-paragraph (d);

(v) after sub-paragraph (e) insert—

"(ea) in the case of forest reproductive material imported into Northern Ireland, it met the requirements set out in the NI Regulations as to entry into Northern Ireland and was accompanied on its entry into Wales by the supplier's label or document required by regulation 19 of the NI Regulations; ";

(vi) omit sub-paragraph (f);

(b) omit paragraph (12).

(9) In regulation 18(3), in sub-paragraph (c), for "the Directive" substitute "any provision made under retained EU law relating to forest reproductive material or under the Plant Varieties and Seeds Act 1964(**1**)".

(**1**) 1964 c. 14.

(10) In regulation 19—

(a) in paragraph (1)—

(i) in sub-paragraph (e), omit ", another member State";

(ii) omit sub-paragraph (h) and the preceding "and";

(iii) omit sub-paragraph (i);

(b) in paragraph (3), for "EU-approved" substitute "approved non-EU".

(11) In the heading to Part 6, for "Between Great Britain and elsewhere in the European Union" substitute "within the United Kingdom".

(12) In regulation 21, for "Northern Ireland", in each place where it occurs (including the heading), substitute "another part of the United Kingdom".

(13) Omit regulation 22.

(14) In regulation 23—

(a) in the heading, at the end, insert "or within Great Britain";

(b) for "Northern Ireland" substitute "another part of the United Kingdom";

(c) for "required by Article 14 of the Directive" substitute "setting out the particulars required under regulation 19 of these Regulations or regulation 19 of the NI Regulations".

(15) Omit regulation 24.

(16) In regulation 25—

(a) in paragraphs (1) and (2), for "an EU-approved" substitute "a member State, an approved non-EU";

(b) in paragraph (6), for "an EU-approved" substitute "a member State or an approved non-EU".

(17) In regulation 26(3)(a)(vii), at the beginning insert "UK".

(18) In regulation 27—

(a) in paragraph (2)—

(i) omit ", including representatives of the Commission of the European Union";

(ii) omit ", or for facilitating the checks required under Article 16(6) of the Directive";

(b) in paragraph (3), omit "the Commission of the European Union or".

(19) In regulation 34(2), omit "or European Community".

(20) In the model certificate in Schedule 6—

(a) for "ISSUED IN ACCORDANCE WITH DIRECTIVE 1999/105/EC" substitute—

"ISSUED IN ACCORDANCE WITH THE OECD FOREST AND PLANT SCHEME AND THE FOREST REPRODUCTIVE MATERIAL (GREAT BRITAIN) REGULATIONS 2002";

(b) for "**MEMBER STATE:**" substitute "**UNITED KINGDOM**";

(c) for "**No EC:/(MEMBER STATE CODE)/ (No)**" substitute "**UK (No.)**";

(d) for "EC Directive" substitute "OECD Forest Seed and Plant Scheme moving in International Trade and the Forest Reproductive Material (Great Britain) Regulations 2002";

(e) for "**EC Certificate**" substitute "**UK or OECD Certificate**".

(21) In the model certificate in Schedule 7—

(a) for "ISSUED IN ACCORDANCE WITH DIRECTIVE 1999/105/EC" substitute—

"ISSUED IN ACCORDANCE WITH THE OECD FOREST AND PLANT SCHEME AND THE FOREST REPRODUCTIVE MATERIAL (GREAT BRITAIN) REGULATIONS 2002";

(b) for "**MEMBER STATE**:" substitute "**UNITED KINGDOM**";

(c) for "**No EC:/(MEMBER STATE CODE)/ (No.)**" substitute "**UK (No.)**";

(d) for "EC Directive" substitute "OECD Forest Seed and Plant Scheme and the Forest Reproductive Material (Great Britain) Regulations 2002";

(e) for "**EC Certificate**" substitute "**UK or OECD Certificate**".

(22) In the model certificate in Schedule 8—

(a) for "ISSUED IN ACCORDANCE WITH DIRECTIVE 1999/105/EC" substitute—

"ISSUED IN ACCORDANCE WITH THE OECD FOREST AND PLANT SCHEME AND THE FOREST REPRODUCTIVE MATERIAL (GREAT BRITAIN) REGULATIONS 2002";

(b) for "**MEMBER STATE**:" substitute "**UNITED KINGDOM**";

(c) for "**No EC:/(MEMBER STATE CODE)/ (No)**" substitute "**UK (No.)**";

(d) for "EC Directive" substitute "OECD Forest Seed and Plant Scheme and the Forest Reproductive Material (Great Britain) Regulations 2002";

(e) for "**EC Certificate**" substitute "**UK or OECD Certificate**".

(23) In Schedule 9—

(a) in paragraph 1(b), omit "EC", in both places where it occurs;

(b) in the table in paragraph 2(b), omit the first row and the last three rows.

(24) Omit Schedule 10.

(25) In Schedule 13—

(a) in paragraph 1, for "an EU-approved" substitute "a member State, an approved non-EU";

(b) in paragraph 2—

(i) before the definition of "OECD Certificate of Provenance" insert—

""OECD Certificate of Identity" means a certificate of identity issued in accordance with the rules of the OECD Scheme;";

(ii) in the definition of "permitted material"—

(aa) before paragraph (a) insert—

"(za)in the case of forest reproductive material produced in a member State, forest reproductive material which has been certified by the relevant official body in accordance with Article 12 of the Directive or the OECD Scheme;";

(bb) in paragraph (a), for "EU-approved" substitute "approved non-EU";

(c) after Part 1 insert—

"PART 1A

Approved non-EU third countries

1. Canada

2. Norway

3. Serbia

4. Switzerland

5. Turkey

6. United States

PART 1B

Scope of Part 1B

2A. This Part applies to consignments of permitted material produced in a member State.

General requirements

2B. A consignment of permitted material must be accompanied by—

(a) a copy of the Master Certificate issued by the relevant official body under Article 12 of the Directive;

(b) a label or document which complies with the requirements in Article 14 of the Directive;

(c) an OECD Certificate of Provenance or OECD Certificate of Identity issued in relation to the permitted material; or

(d) a label or document completed by the supplier of the consignment containing—

(i) the supplier's name;

(ii) all of the information contained in the OECD Certificate of Provenance or OECD Certificate of Identity; and

(iii) in relation to any seed lot which is accompanied by an OECD Certificate of Provenance or an OECD Certificate of Identity, the information specified in paragraph 2D.

2C. Where the permitted material is accompanied by an OECD Certificate of Provenance or OECD Certificate of Identity, or a label or document referred to in paragraph 2B(d), an OECD label must be attached to each seed lot and to each consignment of planting stock.

2D. The OECD label attached to the seed lot and any supplier's document accompanying the seed lot must contain the following additional information in relation to the seed lot assessed, so far as is practicable in all the circumstances, using internationally accepted techniques—

(a) the percentage by weight of pure seed, other seed and inert matter;

(b) the germination percentage of pure seed or, where it is impossible or impracticable to assess the germination percentage, the viability percentage

assessed by reference to a method which must be described;

(c) the weight of 1000 pure seeds;

(d) the number of germinable seeds per kilogram of the seed, or where it is impossible or impracticable to assess the number of germinable seeds, the number of viable seeds per kilogram;

(e) in the case of a seed lot of closely related species which does not reach a minimum species purity of 99%, the species purity.

2E. But the OECD label and supplier's document may omit the following information—

(a) any information mentioned in paragraph 2D(a) to (e) which is yet to be ascertained by testing the seed using internationally accepted techniques;

(b) in the case of a seed lot containing seed which has been harvested from the current season's crop, any information mentioned in paragraph 2D(b) or (d) which is not yet available;

(c) in the case of seed which is to be marketed in quantities no greater than those specified for the species or artificial hybrid of the seed in Schedule 11, the information mentioned in paragraph 2D(b) or (d).

2F. All seed must be consigned in sealed packages."

PART 3

Amendment of the Plant Health (Forestry) Order 2005

3. The Plant Health (Forestry) Order 2005(**1**) is amended as follows.

4. In article 2—

(a) in paragraph (1)—

(i) at the appropriate places insert—

""appropriate UK plant health authority" means—

(a) in relation to timber and forest pests in England, the Forestry Commissioners;

(**1**) S.I. 2005/2517, amended by S.I. 2006/2696, 2008/644, 2009/594, 2009/3020, 2012/2707, 2013/755 (W. 90), 2013/2691, 2014/2420, 2016/1167, 2017/1178 and 2018/1048.

(b) otherwise in relation to England, the Secretary of State;

(c) in relation to Wales, the Welsh Ministers;

(d) in relation to Scotland, the Scottish Ministers;

(e) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

(f) in relation to the Bailiwick of Guernsey, the States of Guernsey;

(g) in relation to the Bailiwick of Jersey, the Department of Environment of the Bailiwick of Jersey;

(h) in relation to the Isle of Man, the Department of Environment, Food and Agriculture of the Isle of Man;";

""CD territory" means the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man;";

""the list of controlled material" means Schedule 6 to the Plant Health Regulations; ";

""the list of pest free area controlled material" means Schedule 7 to the Plant Health Regulations;";

""the list of prohibited infested material" means Schedule 2 to the Plant Health Regulations;";

""the list of prohibited material" means Schedule 3 to the Plant Health Regulations; ";

""the list of prohibited plant pests" means Schedule 1 to the Plant Health Regulations; ";

""the list of regulated material" means Schedule 4 to the Plant Health Regulations; ";

""NI Order" means the Plant Health Order (Northern Ireland) 2018(**1**);";

""NI (Wood and Bark) Order" means the Plant Health (Wood and Bark) Order (Northern Ireland) 2006(**2**);";

""pest free area" means that part of a UK pest free area that is in Wales or, where the UK pest free area includes two or more separate parts of Wales, each such part;";

(**1**) N.I.S.R. 2018/184.
(**2**) N.I.S.R. 2006/66.

""the Plant Health Regulations" means the Plant Health (EU Exit) Regulations 2019(**1**);";

""regulated tree pest" means—

(a) a tree pest of a description specified in Part A, B or D of the list of prohibited plant pests;

(b) a tree pest of a description specified in Part C of the list of prohibited plant pests which relates to a pest free area;

(c) a tree pest of a description specified in column 2 of Part A, B or D of the list of prohibited infested material;

(d) a tree pest of a description specified in column 2 of Part C of the list of prohibited infested material which relates to a pest free area;";

""UK pest free area" means an area in the United Kingdom which has been established as a pest free area in accordance with ISPM No. 4;";

""UK plant passport" means a label and, where appropriate, an accompanying document that meets the relevant requirements set out in Schedule 9, issued by or with the authority of the appropriate UK plant health authority, and includes any replacement of such a passport;";

""UK territory" means England, Wales, Scotland or Northern Ireland;";

(ii) omit the definitions of "area of plant health control" and "associated controlled dunnage";

(iii) in the definition of "authorised officer", for paragraphs (a) to (c) substitute—

"(a) in relation to a UK plant passport, an inspector acting under the authority of the appropriate UK plant health authority; or

(b) in relation to a phytosanitary certificate or phytosanitary certificate for re-export, an authorised representative of, or a public officer acting under, the national plant protection organisation of the country in which a phytosanitary certificate or phytosanitary certificate for re-export or a translation of a phytosanitary certificate or phytosanitary certificate for re-export is issued;";

(**1**) S.I. 2019/XXX.

(iv) omit the definition of “bark-free”;

(v) for the definition of “consignment” substitute—

““consignment” means a quantity of goods covered by a single document required for customs or other formalities;”;

(vi) omit the definition of “debarked”;

(vii) omit the definitions from “Decision 2002/757/EC” to “Decision (EU) 2015/893”;

(viii) omit the definitions of “the Directive”, “dunnage”, “EC transit goods”, “Euro-Mediterranean area” and “Europe”;

(ix) in the definition of “European Union”, omit “including the Isle of Man and the Channel Islands”;

(x) omit the definition of “fruit”;

(xi) in the definition of “importer”, for “landing” substitute “consignment”;

(xii) omit the definitions of “isolated bark” and “landed”;

(xiii) for the definition of “lot” substitute—

““lot” means a number of units of a single commodity, identifiable by its homogeneity of composition and origin, which form part of a consignment;”;

(xiv) in the definition of “national plant protection organisation”, for “European Commission”, substitute “national plant protection organisation of the United Kingdom”;

(xv) omit the definition of “North America”;

(xvi) in the definition of “official”, for “responsible official body” substitute “appropriate UK plant health authority”;

(xvii) omit the definitions of “official body of destination”, “official body of point of entry” and “official documentation”;

(xviii) in the definition of “official label”, for the words from “responsible” to the end substitute “appropriate UK plant health authority”;

(xix) in the definition of “official statement”, for “plant passport” substitute “UK plant passport”;

(xx) omit the definition of “OPM protected zone”;

(xxi) in the definitions of “phytosanitary certificate” and “phytosanitary certificate for reexport”, for “articles 7 and” substitute “article”;

(xxii) omit the definitions of "plant health check", "plant health movement document" and "plant passport";

(xxiii) for the definition of "planting" substitute—

""planting" means any operation for the placing of plants to ensure their subsequent growth, reproduction or propagation;";

(xxiv) omit the definition of "protected zone";

(xxv) omit the definition of "Regulation (EC) No 690/2008";

(xxvi) omit the definitions of "responsible official body" and "round wood";

(xxvii) omit the definitions of "solid fuel wood" and "Swiss plant passport";

(xxviii) for the definition of "third country" substitute—

""third country" means—

(a) a country or territory outside the European Union, other than a territory within the British Islands; or

(b) the European Union;";

(xxix) omit the definition of "tree or shrub in tissue culture";

(xxx) omit the definition of "the USA";

(b) omit paragraph (2);

(c) omit paragraph (3A);

(d) omit paragraph (5);

(e) after paragraph (5) insert—

"(6) As regards Wales, words and expressions which are not defined in this Order and which appear in the Plant Health Regulations have the same meaning in this Order as they have in the Plant Health Regulations."

5. In article 2A—

(a) in paragraph (1)(a), omit "England or";

(b) after paragraph (1) insert—

"(1A) The functions of an inspector under articles 9, 10A, 12, 12A, 13, 23 and 31(1) to (3) are exercisable in relation to tree pests and relevant material which are brought into a point of entry that is located in Wales, by an inspector authorised by the Welsh Ministers.";

(c) in paragraph (3)(a), omit "England or";

(d) after paragraph (3) insert—

"(3A) The functions of an inspector under articles 31(4) to (7), 32, 40 and 41A are exercisable in relation to premises or a free zone

in Wales, by an inspector authorised by the Welsh Ministers.".

6. In article 3—

(a) at the appropriate places insert—

""correct phytosanitary certificate", in relation to notifiable relevant material, means a phytosanitary certificate or phytosanitary certificate for re-export which has been issued—

(a) in the manner specified in article 7(2) to (5); and

(b) in respect of the relevant prescribed requirements;";

""designated area of plant health control", in relation to notifiable relevant material, means a place close to a point of entry which has been designated as an area of plant health control by the Welsh Ministers and the Commissioners for Her Majesty's Revenue and Customs;";

""EU transit material" means any notifiable relevant material from a third country, other than a country or territory in the European Union, which is consigned to the United Kingdom via the European Union and which was not, on its entry into the European Union, subject to—

(a) the formalities described in Article 13a of Directive 2000/29/EC(**1**); or

(b) to other similar official controls under Regulation (EU) 2017/625 of the European Parliament and of the Council, as it has effect in EU law(**2**);";

""notifiable relevant material" means any relevant material—

(a) of a description specified in Schedule 5 to the Plant Health Regulations;

(b) of a description specified in Schedule 7 to the Plant Health Regulations, originating in a third country;";

""notified EU material" means any notifiable relevant material originating in the European Union or Switzerland which is intended to be, or has been, consigned to the United Kingdom from the European Union or Switzerland via a point of entry in Wales and whose arrival in Wales has been

(**1**) OJ No. L 169, 10.7.2000, p. 1, as last amended by Commission Implementing Directive (EU) 2017/1920 (OJ No. L 271, 20.10.2017, p. 34).
(**2**) OJ No. L 095, 7.4.2017, p. 1.

notified to the Welsh Ministers in accordance with article 6(A1);";

""point of entry" means—

(a) in the case of relevant material which arrives by air, the airport at which the material first arrives in the United Kingdom;

(b) in the case of relevant material which arrives by maritime or fluvial transport, the port at which the material first arrives in the United Kingdom;

(c) in the case of relevant material which arrives by rail, the rail freight terminal at which the material first arrives in the United Kingdom;

(d) in the case of relevant material which arrives by road, the initial destination of the material after its arrival in the United Kingdom;";

""prescribed requirements", in relation to any notifiable relevant material, means—

(a) the requirements specified in respect of the material in article 5; or

(b) in the case of any material which is destined for a UK pest free area which includes Northern Ireland, but not England or Wales, the requirements specified in respect of that material in article 4 of the Plant Health (Wood and Bark) Order (Northern Ireland) 2006(**1**) or article 5 of the Plant Health Order (Northern Ireland) 2018(**2**);";

""relevant Plant Health Order" means—

(a) in relation to relevant material destined for England, the Plant Health (England) Order 2015 and the Plant Health (Forestry) (England) Order 2005 in its application to England;

(b) in relation to relevant material destined for Wales, the Plant Health (Wales) Order 2018(**3**) and the Plant Health (Forestry) Order 2005 in its application to Wales;

(c) in relation to relevant material destined for Scotland, the Plant Health (Scotland) Order 2005(**4**) and the Plant

(**1**) S.R. 2006 No. 66, amended by S.R 2009 No. 340, S.R. 2010 No. 48, S.R. 2012 No. 400, S.R. 2015 No. 129.
(**2**) S.R. 2018 No. 184.
(**3**) S.I. 2018/1064 (W. 223).
(**4**) S.S.I. 2005/613, amended by S.S.I. 2006/474, 2007/415, 498, 2008/300, 350, 2009/153, 2010/206, 342, 2012/266, 326, 2013/5, 187, 366, 2014/140, 2015/10, 2016/83, 2018/112, 283.

Health (Forestry) Order 2005 in its application to Scotland;

(d) in relation to relevant material destined for Northern Ireland, the Plant Health (Wood and Bark) (Phytophthora ramorum) Order (Northern Ireland) 2005(**1**), the Plant Health (Wood and Bark) Order (Northern Ireland) 2006 or the Plant Health Order (Northern Ireland) 2018;";

""trade documents" in relation to a consignment of notifiable relevant material, means the invoice, delivery note, consignment note or other similar document;";

(b) for "approved place of inspection" substitute—

""approved place of inspection", as regards Wales, means a place which has been approved by the Welsh Ministers under article 17A or, in relation to other UK territories, by the appropriate UK plant health authority under equivalent provisions of the relevant Plant Health Order;";

(c) omit the definitions of the "Customs Code" and "customs document";

(d) omit the definitions of "identity check" and "industry certificate".

7. Omit article 4.

8. After article 4 insert—

"**Application of Part 2: Wales**

4A. This Part applies to plant pests and relevant material which are brought into Wales from a third country, whether directly or via another UK territory."

9. In article 5—

(a) in the heading for "landing" substitute "bringing in";

(b) at the beginning insert—

"(A1) No person may bring any of the following into Wales—

(a) any tree pest of a description specified in Part A, B or D of the list of prohibited plant pests;

(b) any relevant material of a description specified in column 2 of Part A, B or D of the list of prohibited infested

(**1**) S.R. 2005 No. 252.

material which is carrying or infected with a tree pest of a description specified in the corresponding entry in respect of that description of relevant material in column 3;

(c) any tree pest which, although not specified in Part A, B or D of the list of prohibited plant pests, or in column 3 of Part A, B or D of the list of prohibited infested material, is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain;

(d) any relevant material of a description specified in column 2 of Part A or B of the list of prohibited material which originates in a third country specified in the corresponding entry in respect of that description of relevant material in column 3;

(e) any relevant material of a description specified in column 2 of Part A or D of the list of regulated material, unless the requirements specified in the corresponding entries in respect of that description of relevant material in column 3 are complied with;

(f) in the case of any relevant material which is destined for a pest free area, any tree pest of a description specified in column 2 of Part C of the list of prohibited plant pests which relates to that pest free area;

(g) in the case of any relevant material which is destined for a pest free area specified in column 4 of Part C of the list of prohibited infested material, any relevant material of a description specified in the corresponding entry in column 2 of Part C of that list which is carrying or infested with a tree pest of a description specified in the corresponding entry in column 3;

(h) in the case of any relevant material which is destined for a pest free area specified in column 4 of Part C of the list of regulated material, any relevant material of a description specified in the corresponding entry in column 2 of that Part, unless the requirements specified in the corresponding entries in respect of that relevant material in column 3 are complied with.";

(c) omit paragraphs (1) and (1A);

(d) in paragraph (2), after "paragraph" insert "(A1)(d) or";

(e) after paragraph (2) insert—

"(3) The prohibitions in paragraph (A1)(b) to (h) do not apply to relevant material which enters a point of entry that is located in another UK territory and is discharged in that territory in accordance with article 11 of the NI (Wood and Bark) Order or article 12 of any other relevant Plant Health Order."

10. In article 6—

(a) in the heading, for "landing" substitute "arrival";

(b) at the beginning insert—

"(A1) No person may bring any notifiable relevant material into a point of entry that is located in Wales, unless notice is given in accordance with this article.";

(c) omit paragraphs (1) and (2);

(d) in paragraph (3)—

(i) in the words before sub-paragraph (a), after "paragraph" insert "(A1) or";

(ii) in the words after sub-paragraph (b), for "the relevant material is landed" substitute "its arrival";

(e) in paragraph (4), after "paragraph" insert "(A1) or";

(f) in paragraph (5)—

(i) after "paragraph", in the first place it occurs, insert "(A1) or";

(ii) for "landing" substitute "arrival".

11. After article 6 insert—

"**EU transit material: Wales**

6A.—(1) No person may bring any EU transit material into a RoRo port that is located in Wales, unless that material is destined for a single approved place of inspection.

(2) Paragraph (1) is subject to article 8(A1).

(3) In this article, "RoRo port" means—

(a) a RoRo listed location within the meaning of regulation 130 of the Customs (Import Duty) (EU Exit) Regulations 2018(**1**); or

(**1**) S.I. 2018/1248.

(b) if a notice has not been published pursuant to regulation 130(1) of those Regulations, a point of entry that—

(i) predominantly services roll-on/roll-off ferries operating between Wales and a member State; and

(ii) is listed in a notice published by the Welsh Ministers from time to time."

12. In article 7—

(a) at the beginning insert—

"(A1) Subject to article 8 and to paragraph (6), no person may bring any notifiable relevant material into a point of entry that is located in Wales unless the material is accompanied by one of following certificates which certifies that the material meets the prescribed requirements—

(a) a phytosanitary certificate issued in the country in which that material originates or in the country from which it was consigned;

(b) where paragraph (2) applies, by a phytosanitary certificate for re-export." ;

(b) omit paragraph (1);

(c) omit paragraph (4);

(d) in paragraph (6)—

(i) in the words before sub-paragraph (a), for "paragraph (1) does" substitute "paragraph (A1) and paragraph (1) do";

(ii) in sub-paragraph (a), for "landed in" substitute "brought into";

(iii) in sub-paragraph (b)—

(aa) for "landed in" substitute "brought into";

(bb) for "European Union" substitute "United Kingdom";

(e) omit paragraph (7).

13. In article 8—

(a) at the beginning insert—

"(A1) The provisions referred to in paragraph (A2) do not apply to—

(a) any tree or wood described in paragraph (2) originating in any third country, other than the European Union or Switzerland, which is brought into England in the baggage of a passenger or other traveller coming from any

such third country and meets the conditions in paragraph (A3); or

(b) any small quantity of relevant material originating in the European Union or Switzerland which is brought into England in the baggage of a passenger or other traveller coming from the European Union or Switzerland and meets the conditions in paragraph (A3).

(A2) The provisions are—

(a) article 5(A1)(e) and (h);

(b) article 6(A1);

(c) article 6A(1);

(d) article 7(A1);

(e) article 10A;

(f) article 12A.

(A3) The conditions are that the relevant material—

(a) does not show any signs of the presence of a tree pest;

(b) is not intended for use in the course of a trade or business;

(c) is intended for household use; and

(d) in the case of any tree or wood originating in a third country, other than the European Union or Switzerland, has been grown in or consigned from the Euro-Mediterranean area.";

(b) omit paragraph (1);

(c) in paragraph (2), in the words before sub-paragraph (a), after "to in" insert "paragraph (A1) or".

14. In article 9—

(a) at the beginning insert—

"(A1) The following documents must be delivered to an inspector by the importer of a consignment of notifiable relevant material within three days of the date of its arrival in Wales—

(a) any phytosanitary certificate or phytosanitary certificate for re-export which is required under article 7(A1) to accompany the consignment of notifiable relevant material; and

(b) in the case of notified EU material, the trade documents which accompany the consignment.

(B1) The importer of a consignment of notifiable relevant material must include in a

customs document relating to the consignment—

(a) a statement that "this consignment contains produce of phytosanitary relevance";

(b) the reference number of the phytosanitary certificate or phytosanitary certificate for re-export which is required under article 7(A1) to accompany the consignment; and

(c) the registration number of the importer. ";

(b) omit paragraphs (1) and (2);

(c) after paragraph (3) insert—

"(4) Paragraph (A1) does not apply to any notifiable relevant material which is in the course of its consignment to an approved place of inspection in another UK territory.

(5) In paragraph (B1), "customs document" means a document required by the Commissioners for Her Majesty's Revenue and Customs for placing relevant material under a Customs procedure within the meaning of section 3(3) of the Taxation (Cross-border Trade) Act 2018(**1**).".

15. Omit article 10.

16. After article 10 insert—

"Prohibitions applying to notifiable relevant material on entry: Wales

10A.—(1) This article applies to notifiable relevant material, other than notified EU material, which is brought into a point of entry that is located in Wales.

(2) No person may move any notifiable relevant material or cause any notifiable relevant material to be moved from its point of entry unless the material is being moved to a designated area of plant health control or an approved place of inspection.

(3) No person may remove or cause any notifiable relevant material to be removed from its point of entry, or where the material is moved to a designated area of plant health control or an approved place of inspection in Wales, the designated area of plant health control or approved place of inspection, unless an inspector has discharged the material under

(**1**) 2018 c. 22.

article 12 or the removal of the material is permitted under Part 6.

(4) Any notifiable relevant material which is being held at a point of entry or a designated area of plant health control under paragraph (3) must be stored by the importer under the supervision and in accordance with the instructions of an inspector.

(5) The importer is liable for the costs of storing the notifiable relevant material pending its release.".

17. In article 11—

(a) in the words before paragraph (a), after "article 10(1)" insert "and the prohibition imposed by article 10A(3)";

(b) in paragraph (c), for "European Union", substitute "United Kingdom".

18. In article 12—

(a) at the beginning insert—

"(A1) Paragraph (B1) applies to any notifiable relevant material, other than notified EU material, which is brought into a point of entry that it is located in Wales and is not in the course of its consignment to an approved place of inspection in another UK territory.

(B1) An inspector may discharge notifiable relevant material from its point of entry, designated area of plant health control or approved place of inspection in Wales if the inspector is satisfied that—

(a) the material meets the prescribed requirements;

(b) the relevant material corresponds with the description given to it in the phytosanitary certificate or phytosanitary certificate for re-export which accompanied the material on entry; and

(c) the relevant material is accompanied by the correct phytosanitary certificate.";

(b) omit paragraphs (1) and (2);

(c) in paragraph (3), after "the matters" insert "in paragraph (B1)(a)";

(d) omit paragraph (4);

(e) after paragraph (4) insert—

"(4A) An inspector may, for the purpose of being satisfied as to matters in paragraph (B1)(b), carry out an examination of a consignment of relevant material to determine whether it corresponds to its description in the documents that accompany it.";

(f) omit paragraphs (5) and (6);

(g) in paragraph (7)—

(i) in the words before sub-paragraph (a), after "referred to" insert "in paragraph (B1)(c) or";

(ii) in sub-paragraph (a), after "article" insert "9(A1) or";

(iii) omit sub-paragraph (b) and the preceding "; and";

(h) in paragraph (8)—

(i) for "a plant health check" substitute "an examination under paragraph (3)";

(ii) for "checks" substitute "examination".

19. After article 12 insert—

"Requirements applicable to notified EU material: Wales

12A.—(1) This article applies to notified EU material which is brought into a point of entry that is located in Wales.

(2) An inspector must carry out an examination of—

(a) the phytosanitary certificate or phytosanitary certificate for re-export accompanying a consignment of notified EU material to confirm that the consignment is accompanied by the correct phytosanitary certificate; and

(b) the trade documents that accompany the consignment to confirm that those documents correspond to the description of the relevant material in the phytosanitary certificate or phytosanitary certificate for re-export."

20. In article 14(1), for the words from "under" to the end substitute "subject to the control of an officer of Revenue and Customs within the meaning of Schedule 1 to the Taxation (Cross-border Trade) Act 2018".

21. In article 15—

(a) omit paragraph (2);

(b) in paragraph (3)—

(i) in sub-paragraph (a), omit "the responsible official body or";

(ii) in sub-paragraph (b), for "one of the official languages of the European Union" substitute "English or Welsh";

(iii) omit sub-paragraph (c);

(iv) in sub-paragraph (d), for "Plant Protection Organisations of the Member States of the European Union", substitute "the Plant Protection Organisation of the United Kingdom";

(c) omit paragraph (4);

(d) after paragraph (4) insert—

"(4A) Where in relation to any relevant material of a description specified in column 2 of Part A, C or D of the list of regulated material, more than one set of entry requirements is specified in the corresponding entry in column 3 of Part A, C or D of that list, the phytosanitary certificate or phytosanitary certificate for re-export issued in respect of any relevant material of that description must specify under the heading "Additional declaration" which particular requirement has been complied with."

22. Omit article 16.

23. After article 16 insert—

"Requirements to be met by relevant material destined for an approved place of inspection: Wales

16A.—(1) This article applies to notifiable relevant material, other than notified EU material, which is destined for an approved place of inspection.

(2) Any relevant material to which this article applies may not be moved within Wales unless—

(a) it is accompanied by a copy of the phytosanitary certificate or phytosanitary certificate for re-export which accompanied the material on its entry into the United Kingdom;

(b) its packaging and the vehicle in which it is transported is sealed in such a way that there is no risk of the relevant material causing infestation, infection or contamination or a change occurring in the identity of the material or, where the material is destined for an approved place of inspection in Wales, its movement has been otherwise authorised by the Welsh Ministers.

(3) The importer of any relevant material which is destined for an approved place of inspection in Wales must give the Welsh Ministers notice of the following particulars no later than three working days before the material is brought into the United Kingdom—

(a) the name, address and location of the approved place of inspection to which the relevant material is destined;

(b) the scheduled date and time of arrival of the relevant material at the approved place of inspection;

(c) the name, address and registration number of the importer;

(d) the reference number of the phytosanitary certificate or phytosanitary certificate for re-export required under article 7 to accompany the relevant material.

(4) The importer must notify the Welsh Ministers immediately of any changes to the particulars which the importer has given under paragraph (3).

(5) The notice must be given to the Welsh Ministers at the address given by the Welsh Ministers for the purposes of this article."

24. Omit article 17.

25. After article 17 insert—

"Approved places of inspection: Wales

"**17A.**—(1) The Welsh Ministers may approve premises which are not located at a point of entry or are not part of a designated area of plant health control as a place at which appropriate checks may be carried out by an inspector in respect of notifiable relevant material, other than notified EU material.

(2) An application for approval under paragraph (1) may be made to the Welsh Ministers by an importer or other person responsible for those premises in such form and containing such information as the Welsh Ministers may specify.

(3) An approval may be granted subject to conditions, including conditions relating to the storage of the relevant material and may be withdrawn at any time if the Welsh Ministers no longer consider that the premises to which the approval relates are suitable for the purpose for which the approval was given.

(4) The Welsh Ministers may only approve premises as an approved place of inspection in respect of notifiable relevant material, other than EU transit material, if the premises have been designated or approved by the Commissioners for Her Majesty's Revenue and Customs for that purpose.

(5) In the case of any other premises, the Welsh Ministers may only approve those premises as an approved place of inspection for the purpose of carrying out appropriate checks in respect of EU transit material.

(6) In this article, "appropriate checks", in relation to a consignment of notifiable relevant material, means—

(a) an examination of the phytosanitary certificate or phytosanitary certificate for re-export accompanying the consignment to determine whether it is the correct phytosanitary certificate;

(b) an examination of the consignment to determine whether it corresponds to its description in the trade documents that accompany it;

(c) an examination of the consignment and its packaging, and where necessary, the vehicle transporting the consignment to determine whether it meets the prescribed requirements."

26. In Part 3, in the heading, omit "Community".

27. Omit articles 18 and 19.

28. After article 19 insert—

"Prevention of the spread of tree pests: Wales

19A.—(1) This article applies to Wales.

(2) No person may knowingly keep, store, sell, plant or move or knowingly cause or permit to be kept, stored, planted, sold or moved—

(a) any tree pest of a description specified in Part A, B or D of the list of prohibited plant pests;

(b) any relevant material of a description specified in column 2 of Part A, B or D of the list of prohibited infested material which is carrying or infected with a plant pest of a description specified in the corresponding entry in column 3;

(c) any tree pest which, although not specified in Part A, B or D of the list of prohibited plant pests, or in column 3 of Part A, B or D of the list of prohibited infested material, is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain;

(d) any relevant material of a description specified in column 2 of Part E of the list of regulated material which originates in the United Kingdom or a CD territory unless the requirements specified in the corresponding entries in respect of that description of relevant material in column 3 are complied with;

(e) any relevant material originating in a third country which is brought into Wales in contravention of article 5(A1)(d) or (e).

(3) No person may knowingly keep, store, plant, sell or move within a pest free area or knowingly cause or permit to be kept, stored, planted, sold or moved within such an area—

(a) any tree pest of a description specified in column 2 of Part C of the list of prohibited plant pests which relates to the pest free area;

(b) in the case of any pest free area which is, or is included in, a UK pest free area specified in column 4 of Part C of the list of prohibited infested material, any relevant material of a description specified in the corresponding entry in column 2 of that Part which is carrying or infested with a tree pest of a description specified in the corresponding entry in column 3;

(c) any relevant material originating in a third country which is brought into a pest free area in contravention of article 5(A1)(h);

(d) in the case of any pest free area which is, or is included in, a UK pest free area specified in column 4 of Part C of the list of regulated material, any relevant material of a description specified in the corresponding entry in column 2 of that Part which originates in the United Kingdom or a CD territory, unless the requirements specified in the corresponding entries in respect of that relevant material in column 3 are complied with.

(4) The prohibitions in paragraphs (2) and (3) do not apply to any tree pest or relevant material which is required to be kept, stored or moved in compliance with a requirement imposed by an inspector under Part 6 or 7.

(5) In this article, "move" means "move or otherwise dispose of", and "moved" is to be construed accordingly."

29. Omit article 20.

30. After article 20 insert—

"Requirements for UK plant passports: Wales

20A.—(1) No person may move any of the following relevant material into or within Wales unless it is accompanied by a UK plant passport—

(a) any relevant material of a description specified in the list of controlled material which originates in the United Kingdom or a CD territory;

(b) any relevant material that has been discharged by the Commissioners under article 12(1) or by another appropriate UK plant health authority in an equivalent manner;

(c) in the case of any notifiable relevant material originating in the European Union or Switzerland which was brought into a point of entry in the United Kingdom, any relevant material specified in the list of controlled material which originates in the European Union or Switzerland and was notified to the Commissioners in accordance with article 6(1), or to the appropriate UK plant health authority in accordance with equivalent requirements under the relevant Plant Health Order.

(2) No person may move any of the following relevant material into or within a pest free area unless it is accompanied by a UK plant passport which is valid for that pest free area or the UK pest free area of which it is a part—

(a) any relevant material of a description, specified in the list of pest free area controlled material in respect of the relevant UK pest free area, which originates in the United Kingdom or a CD territory;

(b) any relevant material of a description specified in the list of pest free area controlled material in respect of the relevant UK pest free area that has been discharged by the Commissioners under article 12(1) or by another appropriate UK plant health authority in an equivalent manner;

(c) in the case of any notifiable relevant material originating in the European

Union or Switzerland which was brought into a point of entry in the United Kingdom, any relevant material specified in the list of pest free area controlled material in respect of the relevant UK pest free area which—

(i) originates in the European Union or Switzerland; and

(ii) was notified to the Commissioners in accordance with article 6(1), or to the appropriate UK plant health authority in accordance with equivalent requirements under the relevant Plant Health Order

(3) No person may consign from Wales to another UK territory or a CD territory any of the following relevant material originating in Wales unless it is accompanied by a UK plant passport—

(a) in the case of relevant material destined for Northern Ireland or England, any relevant material of a description specified in the list of controlled material;

(b) in the case of relevant material destined for a place in Northern Ireland or England which is within a UK pest free area, any relevant material of a description, specified in the list of pest free area controlled material in respect of that UK pest free area;

(c) in the case of relevant material destined for Scotland, any relevant material of a description specified in Part A of Schedule 6 to the Plant Health (Forestry) Order 2005;

(d) in the case of relevant material destined for a place in Scotland which is within a UK pest free area, any relevant material of a description specified in Part B of Schedule 6 to the Plant Health (Forestry) Order 2005 in respect of that UK pest free area;

(e) in the case of relevant material destined for a CD territory, any relevant material of a description specified for the purposes of this paragraph in the applicable plant health legislation of that CD territory.

(4) In the case of any relevant material originating in a place of production in Wales, a UK plant passport may only be issued in respect of that material if the material has been

subjected to a satisfactory inspection at the place of production.

(5) The requirements in paragraphs (1)(b) and (2)(b) do not apply to any notified EU material moving from its point of entry to its first destination in the United Kingdom if it is accompanied by a copy of the phytosanitary certificate or phytosanitary certificate for re-export which accompanied the material on its entry into the United Kingdom.

(6) In paragraphs (1) and (2), "relevant Plant Health Order" has the same meaning as in Part 2 (see article 3)."

31. In article 21—

(a) in paragraph (1)—

(i) omit "prohibitions on landing in article 18(1)(e), (f) and (g) and (3) and the";

(ii) after "plant passport" insert "or, as regards Wales, article 20A(1)(a), (2)(a) and (3)";

(b) omit paragraph (2A).

32. Omit article 22.

33. After article 22 insert—

"Validity of UK plant passports: Wales

22A.—(1) This article applies to relevant material of a description specified in the list of pest free area controlled material which relates to a pest free area and which is moved through a pest free area to a destination outside the relevant UK pest free area.

(2) The requirements in article 20A(2) do not apply if the relevant material—

(a) originates outside the relevant UK pest free area;

(b) is accompanied during its transit through the pest free area by a document of a type normally used for trade purposes which certifies that the material originates outside the relevant UK pest free area and is in transit to a final destination outside the relevant UK pest free area and the conditions in paragraph (3) are met.

(3) The conditions are that—

(a) the packaging in which the relevant material is transported and any vehicle which is used to transport the material is free from soil and plant debris and any relevant tree pest;

(b) the material was sealed immediately after packaging or, where appropriate, after loading, and remains sealed during its journey through the relevant UK pest free area;

(c) the nature or construction of the packaging in which the material is transported and any vehicle which is used to transport the material are sufficient to ensure that there is no risk of any relevant tree pest which may be present in or on the relevant material escaping.

(4) In this article—

(a) "relevant UK pest free area", in relation to any relevant material of a description specified in the list of pest free area controlled material, means the pest free area which is, or is part of, the UK pest free area that has been designated in respect of that material;

(b) "relevant tree pest", in relation to a UK pest free area, means the tree pest in respect of which the UK pest free area has been designated."

34. In article 23—

(a) in the heading, for "plant passports" substitute "UK plant passports";

(b) in paragraphs (1) to (4), for "plant passport", in each place it occurs, substitute "UK plant passport";

(c) in paragraph (4)(b)(ii), at the end insert "or, as regards Wales, a regulated tree pest".

35. In Part 4, in the heading, for "PLANT PASSPORTS" substitute "UK PLANT PASSPORTS".

36. In article 24, omit paragraph (4).

37. In article 28—

(a) in the heading and paragraphs (1), (4), (5) and (6), for "plant passports", in each place it occurs, substitute "UK plant passports";

(b) in paragraph (7), omit "or" after sub-paragraph (a) and after sub-paragraph (b) insert—

"(c) as regards Wales, a regulated tree pest."

38. Omit Part 5.

39. In article 30—

(a) in paragraph (1)(b), for "plant passport" substitute "UK plant passport";

(b) in paragraph (7), omit ", including representatives of the European Commission,".

40. After article 30 insert—

"**Emergency measures: Wales**

30A.—(1) Where a regulated tree pest is found to be present in Wales, the Welsh Ministers may by notice—

(a) demarcate an area in relation to that infestation for the purpose of eradicating or containing that tree pest; and

(b) specify the prohibitions and restrictions which are to apply in the demarcated area for that purpose.

(2) A notice under paragraph (1)—

(a) must be in writing,

(b) must describe the extent of the demarcated area,

(c) must specify the date on which any such prohibitions or restrictions are to commence,

(d) must be published in a manner appropriate to bring it to the attention of the public, and

(e) may be amended or revoked, in whole or in part, by further notice."

41. In article 31—

(a) in paragraph (1), for "landed" substitute "brought into a point of entry located";

(b) in paragraph (2)—

(i) in sub-paragraph (a), for "landed" substitute "brought into the point of entry";

(ii) in sub-paragraph (b), for "landed" substitute "brought in";

(c) in paragraph (3)—

(i) in sub-paragraph (a), for "landing" substitute "bringing in";

(ii) in sub-paragraph (b)—

(aa) for "the landing is to be carried out" substitute "any tree pest or relevant material is to be brought in";

(bb) for "to the landing" substitute "to its entry";

(d) in paragraph (5)—

(i) in sub-paragraph (a), at the end insert "or, as regards Wales, a regulated plant pest";

(ii) omit sub-paragraph (c) and the preceding "and";

(e) in paragraph (6)(b)—

(i) omit "or 18";

(ii) at the end insert "or, as regards Wales, article 19A".

42. In article 32—

(a) in paragraph (2)(a), at the end insert "or, as regards Wales, a regulated tree pest";

(b) in paragraph (4), omit ", including representatives of the European Commission,".

43. In article 36(2), omit ", including representatives of the European Commission,".

44. In article 38—

(a) in paragraph (1)—

(i) for "landed," substitute "imported into or";

(ii) before sub-paragraph (a) insert—

"(za) in the case of any licence granted by the Welsh Ministers, in exercise of any derogation permitted by Schedule 8 to the Plant Health Regulations;";

(iii) omit sub-paragraphs (a) and (b);

(b) in paragraph (2), for "(1)(b)" substitute "(1)";

(c) omit paragraph (3).

45. In article 39—

(a) in the heading, omit "permitted by Directive 2008/61/EC";

(b) at the beginning insert—

"(A1) The Welsh Ministers must by licence authorise the importation, movement or keeping of any tree pest or relevant material for any activity for trial or scientific purposes or for work on varietal selections in Wales, where the importation, movement or keeping of the tree pest or relevant material for any such purpose would otherwise be prohibited by this Order, if the Welsh Ministers—

(a) have received an application for a licence containing the information set out in Part A of Schedule 13A; and

(b) are satisfied that the general conditions set out in Part B of Schedule 13A are met in relation to the application.

(B1) A licence granted under paragraph (A1) must be in writing and include—

(a) the conditions specified in Part C of Schedule 13A which are relevant to any tree pest or relevant material that is the subject of the activities to which the licence relates;

(b) any other conditions as the Welsh Ministers may determine in relation to licence quarantine measures that are appropriate in respect of those activities.";

(c) omit paragraphs (1) and (2);

(d) in paragraph (3), after "under" insert "paragraph (B1)(b) or";

(e) in paragraph (4), after "under" insert "paragraph (A1) or";

(f) in paragraph (5), after "this Order" insert "or, as regards Wales, any regulated tree pest";

(g) omit paragraph (6);

(h) in paragraph (7)—

(i) after sub-paragraph (a) insert—

"(aa) "licence quarantine measures", as regards Wales, means the measures specified in Part D of Schedule 13A.";

(ii) omit sub-paragraph (b).

46. In article 40—

(a) omit paragraph (2);

(b) after paragraph (2) insert—

"(2A) In paragraph (1), "notifiable tree pest", as regards Wales, means a regulated tree pest or any other tree pest, which is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain."

47. Omit article 41.

48. After article 41 insert—

"Notification of the likely entry into, or presence in, a free zone of tree pests or relevant material: Wales

41A.—(1) The responsible authority for a free zone in Wales who knows or suspects that any of the following is likely to be brought into the free zone, or is present in the free zone and has not been cleared out of charge, must immediately give notice of that fact to the Welsh Ministers or an inspector—

(a) any regulated tree pest;

(b) any other tree pest which is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain;

(c) any relevant material of a description specified in column 2 of Part A or B of the list of prohibited material which originates in a third country specified in the corresponding entry in respect of that description of relevant material in column 3.

(2) Where a person gives notice in accordance with paragraph (1) orally, the person must confirm it in writing as soon as reasonably practicable.

(3) In this article, "responsible authority" and "free zone" have the same meaning as in the Customs Act."

49. In article 42—

(a) in paragraph (2)(b)—

(i) in paragraph (i), at the end insert "or, as regards Wales, any regulated tree pest";

(ii) in paragraph (ii), at the end insert "or, as regards Wales, any tree pest, other than a regulated tree pest, which is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain";

(b) in paragraph (4), after "certificates," insert "UK".

50. In article 43(1)—

(a) in sub-paragraph (a), after paragraph (i) insert—

"(ia)article 6A;";

(b) in sub-paragraph (b), for "or", in the third pace it occurs, substitute "a prohibition or restriction in a notice published, a provision or condition of a ".

51. After article 45 insert—

"Transitional provision: UK plant passports

45A.—(1) An authorisation to issue plant passports which has been granted and has effect immediately before exit day in relation to Wales continues to apply on or after exit day as if it were an authorisation to issue UK plant passports.

(2) In the case of any plant passport that has been issued in respect of any relevant material before exit day for the purposes of the movement of that material in Wales which takes

place before and after exit day, the plant passport is to be treated as if it were a UK plant passport and references to a UK plant passport are to be construed accordingly."

52. Omit Schedules 1 to 8.

53. In Schedule 9—

(a) in the heading, for "plant passports" substitute "UK plant passports;

(b) in paragraphs 1 and 2, for "plant passport", in both places it occurs, substitute "UK plant passport";

(c) in paragraph 3, for "plant passports", in both places it occurs, substitute "UK plant passports";

(d) in paragraph 4(1)—

(i) in the words before sub-paragraph (a), for "plant passport" substitute "UK plant passport";

(ii) for sub-paragraph (a) substitute—

"(a) in English and Welsh, and";

(e) in paragraphs 5 and 6, for "plant passport", in both places it occurs, substitute "UK plant passport";

(f) in paragraph 7—

(i) for sub-paragraph (a) substitute—

"(a) the title "UK plant passport";";

(ii) omit sub-paragraph (b);

(iii) in sub-paragraph (c), for the words from "responsible" to the end substitute "appropriate UK plant health authority";

(iv) in sub-paragraphs (d) to (g), for "plant passport", in each place it occurs, substitute "UK plant passport";

(v) in sub-paragraph (h)—

(aa) for "protected zone", in both places it occurs, substitute "UK pest free area";

(bb) for "ZP" substitute "PFA";

(vi) in sub-paragraph (i), for "plant passport", in each place it occurs, substitute "UK plant passport";

(vii) in sub-paragraph (j), for "relevant territory" substitute "United Kingdom or a CD territory".

54. In Schedule 12, in Part A—

(a) in paragraph 1, omit ", other than solid fuel wood,";

(b) omit paragraph 2;

(c) omit Part C.

55. Omit Schedule 13.

56. After Schedule 13 insert—

"SCHEDULE 13A

Article 39(A1), (B1), (7)(aa)

Licences for trial or scientific purposes or for work on varietal selections

1. In this Schedule, "specified activity" means any activity for trial or scientific purposes or for work on varietal selections.

PART A

Information to be included in an application for a scientific licence

2. The name and address of the person responsible for the proposed specified activity.

3. The following details in relation to the relevant material and plant pests to be used in the specified activity—

(a) their scientific name or names;

(b) the type of relevant material;

(c) the quantity of relevant material;

(d) the place of origin of the relevant material;

(e) the place at which the relevant material is to be first stored or planted after its official release (where relevant);

(f) the proposed method of destruction or treatment of the relevant material on completion of the specified activity (where relevant);

(g) in the case of any relevant material or plant pest which is to be imported from a third country, its proposed point of entry into the United Kingdom.

4. In the case of any relevant material to be used in the specified activity, appropriate documentary evidence to confirm its place of origin.

5. The duration, nature and objectives of the proposed specified activity, including a summary and a specification of the work to be conducted.

6. The address and description of the specific site or sites at which the proposed specified activity is to be carried out.

PART B

General conditions to be met in relation to an application for a scientific licence

7. The nature and objectives of the specified activity comply with the concept of trial or scientific purposes or for work on varietal selections.

8. The premises and the facilities at the site or sites at which the specified activity is to be carried out meet any conditions relating to their quarantine.

9. The personnel carrying out the specified activity have appropriate scientific and technical qualifications.

PART C

Licence conditions relating to any plant pest or relevant material to be used in a specified activity

10. For the purposes of article 39(B1)(a), the conditions are that—

(a) in the case of any relevant material, the material is accompanied on its entry into the United Kingdom by a letter of authority which has been issued by the relevant national plant protection organisation on the basis of appropriate documentary evidence as regards the place of origin of the material;

(b) in the case of any relevant material of a description specified in Schedule 5 to the Plant Health Regulations, the material is, wherever possible, accompanied on its entry into the United Kingdom, by a phytosanitary certificate issued in the country of origin which—

(i) confirms that the material is free from any regulated plant pest, other than any plant pest whose importation is authorised by the licence;

(ii) includes the statement under the heading "Additional declaration", "This material is imported under

article 39 of the Plant Health (Forestry) Order 2005"; and

(iii) includes the name of any authorised plant pest; and

(c) the relevant material is held under quarantine containment conditions and on arrival is directly and immediately moved to the site or sites specified in the licence.

PART D

Licence quarantine measures

11. The licence quarantine measures are—

(a) in the case of the premises, facilities and working procedures which relate to the specified activity:

(i) the physical isolation of any plant pests or relevant material being used in the specified activity from all other plant pest and relevant material, including control of vegetation in surrounding areas, where appropriate;

(ii) the designation of a contact person responsible for the specified activity;

(iii) the implementation of restrictions on access to the premises and facilities being used in relation to the specified activity and, where appropriate, to the area surrounding those premises and facilities, to named personnel only;

(iv) the appropriate identification of the premises and facilities being used, indicating the type of activities and the personnel responsible;

(v) the maintenance of a register of the activities performed and a manual of operating procedures, including procedures in the event of escape of plant pests from containment;

(vi) the maintenance of appropriate security and alarm systems; and

(vii) the implementation of—

(aa) appropriate control measures to prevent the introduction into and the

spread of plant pests within the premises being used;

(bb) controlled procedures for sampling, and for transfer of any relevant material between premises and facilities being used;

(cc) controls for the disposal of waste, soil and water, as appropriate;

(dd) appropriate hygiene and disinfection procedures and facilities for personnel, structures and equipment;

(ee) appropriate measures and facilities for disposal of experimental material;

(ff) appropriate indexing (including testing) facilities and procedures; and

(b) other appropriate quarantine measures according to the specific biology and epidemiology of the type of material involved and the activities approved, including—

(i) the maintenance of facilities accessible to authorised personnel via a separate room with two interlocking doors;

(ii) the maintenance of facilities under negative air pressure,

(iii) the use of escape-proof containers with appropriate mesh size and other barriers;

(iv) the maintenance of the material in isolation from other plant pests and material;

(v) the maintenance of any material for breeding in breeding cages with manipulation devices;

(vi) the prohibition on any interbreeding of the plant pest with indigenous strains or species;

(vii) the implementation of controls on the continuous culture of the plant pest;

(viii) the maintenance of the plant pest under conditions that strictly control the multiplication of the plant pest;

(ix) the implementation of procedures to check the purity of cultures of

the plant pest for freedom from parasites and other plant pests;

(x) the implementation of appropriate control programmes for the material to eliminate possible vectors;

(xi) in the case of *in vitro* activities, the implementation of controls on the handling of the material under sterile conditions;

(xii) the maintenance of the plant pest in conditions to ensure that it cannot spread via any vector; and

(xiii) the seasonal isolation of the material to ensure that the activities are done during periods of low plant health risk."

PART 4

Amendment of the Plant Health (Fees) (Forestry) (Wales) Regulations 2019

57.—(1) The Plant Health (Fees) (Forestry) (Wales) Regulations 2019(**1**) are amended as follows.

(2) In regulation 2(1)—

(a) for the definition of "controlled consignment" substitute—

""controlled consignment" ("*llwyth a reolir*") means a consignment which includes, or which an inspector considers includes—

(a) isolated bark of a description specified in Schedule 5 to the Plant Health (EU Exit) Regulations 2019;

(b) wood of a description specified in that Schedule, other than wood packaging material which is actually in use in the transport of all kinds of objects;";

(b) omit the definition of "the Directive";

(c) for the definition of "documentary check" substitute—

""documentary check" ("*gwiriad dogfennol*") means an examination for the purposes of article 12(B1)(c) or 12A(2)(a) of the Order;";

(d) for the definition of "identity check" substitute—

(**1**) S.I. 2019/XXX (W.)

""identity check" ("*gwiriad adnabod*") means an examination for the purposes of article 12(B1)(b) or 12A(2)(b) of the Order; ";

(e) for the definition of "plant health check", substitute—

""plant health check" ("*gwiriad iechyd planhigion*") means an examination for the purposes of article 12(B1)(a) of the Order;";

(f) in the definition of "plant passport authority", after "issue" insert "UK".

Name
Title of Minister, one of the Welsh Ministers
Date

Explanatory Memorandum to Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Forest Resources Policy Branch within the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019. I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

I am satisfied that the benefits justify the likely costs.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
5 March 2019

PART 1

1. Description

1.1 Council Directive 2000/29/EC ("the Plant Health Directive") establishes the EU plant health regime. The Plant Health Directive contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Directive and, therefore, the implementing domestic legislation is updated from time to time to take account of new and revised risk assessments, pest interceptions, changes in distribution of pests and other developments.

1.2 The Plant Health Forestry (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 ('the Regulations') correct deficiencies in domestic legislation which implements EU Directive 2000/29/EC on measures to protect (forestry) plant health arising in consequence of the UKs withdrawal from the EU in a 'no deal' scenario.

1.3 The Regulations come into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ('the 2018 Act') defines as 29 March 2019 at 11.00pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 In accordance with paragraph 1(8) of Schedule 7 to the 2018 Act the Regulations are subject to the affirmative procedure as they relate to fees in respect of a function exercisable by a public authority in the UK.

3. Legislative background

3.1 The Regulations are being made in exercise of the power in Part 1 of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the European Union. In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU ("the Plant Health Directive") establishes the EU plant health regime. Whilst protecting against plant health risks, the Plant Health Directive also provides for the trade and

movement of plant material within and between EU Member States, thereby creating an internal EU market for this material.

4.2 The Plant Health Directive is implemented in Wales, in relation to forestry matters, via the Plant Health (Forestry) Order 2005 whose purpose is to prevent the introduction and spread of harmful plant pests and diseases. It sets out obligations for the control and management of plant health risks from the import of plant material from third countries and the movement of such material within the EU single market, in order to protect biosecurity and the value of plant material to the economy and society.

4.3 The Plant Health (Fees) (Forestry) (Wales) Regulations 2019 prescribes the fees relating to forestry activities, such as plant health checks. This enables cost effective implementation of the plant health regime in relation to forestry.

4.4 The Forest Reproductive Material (Great Britain) Regulations 2002 implement EU decisions on the equivalence of forest reproductive material produced in countries outside the European Union and sets out the requirements which apply in Great Britain regarding the categorisation of forest reproductive material and approval of basic material for entry in the National Register, collection and production of forest reproductive material, registration of suppliers, marketing of forest reproductive material and the movement of forest reproductive material between Great Britain and elsewhere within the European Community.

Why is it being changed?

4.5 After EU-Exit, without amendment certain provisions will be inoperable and, as a result, existing law will either be unclear or will not function effectively. This instrument amends provisions which are inappropriate or redundant as a result of the withdrawal of the UK from the EU. It makes changes to ensure that the law functions correctly after exit day, for example to remove references to the Commission, Community, Member States and third countries, and to remove reporting obligations to the Commission which will no longer be appropriate.

What will it now do?

4.6 The Regulations will ensure that plant health (forestry) legislation in Wales, which implements current EU protective measures against the introduction and spread of organisms harmful to plants or plant products, remains effective and continue to be operable after the UK leaves the EU in a ‘no deal’ scenario.

5. Consultation

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is to enable the current legislative and policy framework to remain operable after the withdrawal of the UK from the European Union.

6. Regulatory Impact Assessment (RIA)

6.1 An impact assessment has not been prepared for this instrument because the direct impacts on businesses, charities, voluntary bodies or the public sector are expected to be negligible and not requiring an impact assessment.

6.2 The Regulations largely correct technical deficiencies that will arise from withdrawal and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a	A statement to explain why it is appropriate to create such a sub-delegated power.

		Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

Not applicable.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate”. This is the case because the Regulations largely correct technical deficiencies that will arise from withdrawal and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively, in Wales, once we leave the EU. This is in line with Government policy.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this draft instrument, and I have concluded they are a reasonable course of action”. This is because there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist. The public would also expect us to be able to take enforcement action against those that are in breach of plant health (forestry) legislation. In addition, businesses would expect us to provide conditions within Wales that support the trade and movement of plant material.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

> “The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> "In relation to the draft instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

4.3 Little or no impact on equalities is expected.

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

6.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018.

"In my view there are good reasons for the creation of criminal offences and for the penalties in respect of them in the Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019."

Amendments to existing offences in the Plant Health Order 2005 will be needed to reflect new requirements introduced through the Plant Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 for regulated third country goods which enter Wales via the EU, which have not been subject to plant health checks in the EU and arrive at fast-moving, high volume Ro-Ro ports. The new requirements will require these goods to be moved inland and held securely until plant health checks have been completed. The new offence will provide the ability to enforce and prosecute serious cases of non-compliance with these new requirements.

In addition, a new criminal offence is also required to enforce any failure to comply with any prohibition or restriction in demarcated areas to prevent the spread of certain harmful plant pests in cases where this is an outbreak involving certain pests.

Offences under the Plant Health (Wales) Order 2018 carry, on summary conviction, a penalty of a fine not exceeding level 5 on the standard scale.

7. Legislative sub-delegation

7.1 Not applicable.

8. Urgency

8.1 Not applicable.

Agenda Item 4.25

SL(5)375 – The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which applies in relation to Wales, relevant to cattle identification; the trade in animals and related products; examination for residues and the maximum residue limits in respect of animals and animal products; transmissible spongiform encephalopathies; seed marketing and plant health.

Procedure

Affirmative.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Regulation 7 amends the "Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019". No such Regulations exist. It is understood that they are planned to be made under the negative procedure before the present Regulations are made. If that is not done, regulation 7 will have no effect. [Standing Order 21.2(vi) – defective drafting]

2. Regulation 8 amends the "Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019". No such Regulations exist. It is understood that they are planned to be made under the affirmative procedure before the present Regulations are made. If that is not done, regulation 8 will have no effect. [Standing Order 21.2(vi) – defective drafting]

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

These Regulations purport to amend two sets of Regulations that had not yet been made when this report was drafted. That is a very clear indication of the pressures under which the Welsh Government officials are working and the rapidly developing policies that it is sought to implement. [Standing Order

21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.]

Government Response

The Committee has raised two reporting points under Standing Order 21.2(v).

Timing of amendments

In respect of regulation 7 which amends the "Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019" the first reporting point suggests that the drafting is defective because the regulations do not exist, noting that they are planned to be made under the negative procedure before the present Regulations are made and if that is not done, regulation 7 will have no effect.

The Welsh Government does not agree that the provisions in these Regulations amount to defective drafting on the basis that the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019 are due to be made week commencing 11 March and will come into existence before the amending Regulations.

Timing of amendments

In respect of regulation 8 which amends the "Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019", the second reporting point suggests that the drafting is defective because the regulations do not exist, noting that they are planned to be made under the affirmative procedure before the present Regulations are made and if that is not done, regulation 8 will have no effect.

The Welsh Government does not agree that the provisions in these Regulations amount to defective drafting on the basis that the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 are due to be debated on the 19 March and the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 are due to be debated on the 26 March. It follows that there will be a window within which the Regulations can be made and so come into existence before these amending Regulations.

Legal Advisers
Constitutional and Legislative Affairs Committee
6 March 2019

Draft Regulations laid before the National Assembly for Wales under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ANIMALS, WALES

FOOD, WALES

PLANT HEALTH, WALES

SEEDS, WALES

The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which applies in relation to Wales, relevant to cattle identification; the trade in animals and related products; examination for residues and the maximum residue limits in respect of animals and animal products; transmissible spongiform encephalopathies; seed marketing and plant health.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was

considered in relation to these Regulations. As a result, it was not considered necessary to carry out a Regulatory Impact Assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before the National Assembly for Wales under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ANIMALS, WALES

FOOD, WALES

PLANT HEALTH, WALES

SEEDS, WALES

The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Made ***

Coming into force in accordance with regulation 1

The Welsh Ministers, in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(**1**), make the following Regulations.

In accordance with paragraph 1(8) of Schedule 7 to that Act a draft of this instrument has been laid before the National Assembly for Wales and approved by a resolution of the National Assembly for Wales.

(**1**) 2018 c. 16.

Title, commencement and application

1.—(1) The title of these Regulations is the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(2) This regulation and regulation 8 come into force immediately before exit day.

(3) The remainder of these Regulations come into force on exit day.

(4) These Regulations apply in relation to Wales.

Amendment of the Cattle Identification (Wales) Regulations 2007

2. In paragraph 13 in Part 2 of Schedule 3 to the Cattle Identification (Wales) Regulations 2007(**1**), omit sub-paragraph (2).

Amendment of the Trade in Animals and Related Products (Wales) Regulations 2011

3.—(1) The Trade in Animals and Related Products (Wales) Regulations 2011(**2**) are amended as follows.

(2) In regulation 17, in the words before paragraph (a)—

(a) omit "box 30, 31, 33 or 34 of"; and

(b) for "the European Union" substitute "Wales".

(3) In regulation 38, for "trade between" substitute "imports from".

Amendment of the Seed Marketing (Wales) Regulations 2012

4. In regulation 30 of the Seed Marketing (Wales) Regulations 2012(**3**), for the words from "Secretary of State" to "purposes of" substitute "Welsh Ministers may temporarily permit the marketing of seed not satisfying the requirements of minimum germination under conditions determined in accordance with".

Amendment of the Animal Health (Miscellaneous Fees) (Wales) Regulations 2018

5.—(1) The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018(**4**) are amended as follows.

(2) In regulation 2, for the definition of "third country" substitute—

(**1**) S.I. 2007/842 (W. 74), to which there are amendments not relevant to these Regulations.
(**2**) S.I. 2011/2379 (W. 252), to which there are amendments not relevant to these Regulations.
(**3**) S.I. 2012/245 (W. 39), to which there are amendments not relevant to these Regulations.
(**4**) S.I. 2018/650 (W. 122).

""third country" ("*trydedd wlad*") means a country other than a member State except that—

(a) in regulation 4, it has the meaning it bears in Regulation (EC) No 2160/2003 on the control of salmonella and other specified food-borne zoonotic agents; and

(b) in regulation 9 and Schedule 6, it has the meaning it bears in the 2011 Regulations;".

(3) In regulation 4(1) and its heading, omit "national".

(4) In the heading to Schedule 1, omit "national".

Amendment of the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018

6. In regulation 5(6)(e) of the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018(**1**), for "EU Commission" substitute "Welsh Ministers".

Amendment of the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019

7. In regulation 2(1) of the Animals and Animal Products (Examination of Residues and Maximum Residue Limits) (Wales) Regulations 2019(**2**), in the definition of "unauthorised substance" ("*sylwedd anawdurdodedig*") for "EU legislation" substitute "retained EU law".

Amendment of the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019

8.—(1) The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019(**3**) are amended as follows.

(2) In regulation 8(a)—

(a) in sub-paragraph (i)—

(i) in the inserted definition of "appropriate UK plant health authority", after paragraph (e) insert—

"(f) in relation to the Bailiwick of Guernsey, the Committee for the Environment & Infrastructure of the States of Guernsey;

(g) in relation to the Bailiwick of Jersey, the Department of Environment of the States of Jersey;

(**1**) S.I. 2018 /968 (W. 195), to which there are amendments not relevant to these Regulations.
(**2**) S.I. 2019/XXX (W. XXX).
(**3**) S.I. 2019/XXX (W. XXX).

(h) in relation to the Isle of Man, the Department of Environment, Food and Agriculture of the Isle of Man;";

(ii) after the inserted definition of "appropriate UK plant health authority" insert—

""CD territory" ("*tiriogaeth ddibynnol ar y Goron*") means the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man;";

(b) for sub-paragraph (xxviii) substitute—

"(xxviii)for the definition of "third country" substitute—

""third country" ("*trydedd wlad*") means any country or territory outside the British Islands";".

(3) For regulation 15 substitute—

"**15.** In article 8—

(a) in paragraph (1)—

(i) for the words from "introduced into Wales in the baggage of a passenger or other traveller" substitute "brought into Wales in the baggage of a passenger or other traveller coming from any third country, other than the European Union or Switzerland, or to any exempt material which is brought into Wales in the baggage of a passenger or other traveller coming from the European Union or Switzerland";

(ii) in paragraph (a), for "(f)" substitute "(h)";

(iii) after paragraph (b) insert—

"(ba) article 6A(1);";

(iv) after sub-paragraph (d), insert—"(e) article 12A;";

(b) in paragraph (3)—

(i) in sub-paragraph (a), after "means" insert "any of the following relevant material originating in a third country, other than the European Union or Switzerland";

(ii) after paragraph (a) insert—

"(aa) "exempt material" ("*deunydd esempt* ") means

any small quantity of relevant material originating in the European Union or Switzerland, other than plants of *Castanea* Mill. intended for planting, plants of *Fraxinus* L. intended for planting or plants, other than seeds, of *Platanus* L. intended for planting;"".

(4) In regulation 27—

(a) in paragraph (a)—

(i) in the substituted text of sub-paragraph (e) for "the United Kingdom" substitute "the United Kingdom or a CD territory";

(ii) in the substituted text of sub-paragraph (f), after "United Kingdom" insert "or a CD territory";

(b) in paragraph (b)—

(i) in the inserted text of paragraph (1B)(d), after "United Kingdom" insert "or a CD territory";

(ii) in the inserted text of paragraph (1B)(e), after "United Kingdom" insert "or a CD territory".

(5) In regulation 28—

(a) in paragraph (b)—

(i) in the substituted text of paragraph (1)(a), at the end insert "or a CD territory";

(ii) in the substituted text of paragraph (1)(b), for the words from "under article 12" substitute "on behalf of the Welsh Ministers under article 12(1) or by or on behalf of another appropriate UK plant health authority in an equivalent manner;";

(iii) after the substituted text of paragraph (1)(b) insert—

"(c) in the case of any notifiable relevant material originating in the European Union or Switzerland which was brought into a point of entry in the United Kingdom, any relevant material specified in the list of controlled material which originates in the European Union or Switzerland and was notified to the Welsh Ministers in accordance with article 6(1), or to the appropriate UK plant health authority in accordance with equivalent requirements under the relevant Plant Health Order.";

(iv) in the substituted text of paragraph (2)(a), at the end insert "or a CD territory";

(v) for the substituted text of paragraph (2)(b) substitute—

"(b) any relevant material of a description specified in the list of pest free area controlled material in respect of the relevant UK pest free area that has been discharged on behalf of the Welsh Ministers under article 12(1) or by or on behalf of another appropriate UK plant health authority in an equivalent manner;

(c) in the case of any notifiable relevant material originating in the European Union or Switzerland which was brought into a point of entry in the United Kingdom, any relevant material specified in the list of pest free area controlled material in respect of the relevant UK pest free area which—

(i) originates in the European Union or Switzerland; and

(ii) was notified to the Welsh Ministers in accordance with article 6(1), or to the appropriate UK plant health authority in accordance with equivalent requirements under the relevant Plant Health Order. ";

(vi) in the substituted text of paragraph (3)—

(aa) in the words before sub-paragraph (a), after "UK territory" insert "or a CD territory";

(bb) at the end insert—

"(e) in the case of relevant material destined for a CD territory, any relevant material of a description specified for the purposes of this paragraph in the applicable plant health legislation of that CD territory";

(b) at the end insert—

"(g) after paragraph (10) insert—

"(11) In paragraphs (1) and (2), "relevant Plant Health Order" has the same meaning as in Part 2 (see article 3).".

(6) In regulation 34 for paragraph (b) substitute—

"(b) in paragraph (4), for sub-paragraphs (a) and (b) substitute—

"(a) "professional operator" means any person who, in the course of a trade, business or profession, is involved in planting, breeding, producing, importing, marketing or distributing plants;

(aa) "specified details", in relation to a lot, means its origin, consignor, consignee, place of destination, individual serial, week or batch number of the UK plant passport, identity and quantity;

(b) "*Xylella* specified plants" means plants specified in paragraph 13 of Part E of the list of regulated material which have been grown for a part of their life in, or have been moved through—

(i) an area demarcated under paragraph 5 of Schedule 15 to the Plant Health Regulations or, in relation to Scotland, under equivalent provisions in the Scotland Orders; or

(ii) a CD territory in which *Xylella fastidiosa* (Wells et al.) has been confirmed to be present;"";

(7) In regulation 42(b)(i), for "United Kingdom," substitute "United Kingdom, a CD territory,".

(8) In regulation 48(a), after sub-paragraph (i) insert—

"(ia) omit paragraphs (v) and (vi) of sub-paragraph (a);".

(9) In regulation 51—

(a) in paragraph (d)(viii), for "the United Kingdom" substitute "the United Kingdom or a CD territory";

(b) in paragraph (e), for the words in paragraph (i) substitute "for "elsewhere in the European Union" substitute "in another UK territory or a CD territory"";

(c) in paragraph (h), after the inserted text of paragraph 8(a) insert—

"(aa) in relation to fruit plant propagating material and fruit plants—

(i) produced in England, in Part 2 of Schedule 2 to the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017(**1**);

(ii) produced in Wales, in Part 2 of Schedule 2 to the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017(**2**);

(iii) produced in Scotland, in Part 2 of Schedule 5 to the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017(**3**);

(iv) produced in Northern Ireland, in Part 2 of Schedule 2 to the Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017(**4**);".

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers
Date

(**1**) S.I. 2017/595, amended by S.I. 2019/131.
(**2**) S.I. 2017/691 (W.163), to which there are amendments not relevant to these Regulations.
(**3**) S.S.I. 2017/177, to which there are amendments not relevant to these Regulations.
(**4**) S.R. 2017 No. 119, to which there are amendments not relevant to these Regulations.

Explanatory Memorandum to The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Department for Energy, Planning and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
5 March 2019

PART 1
1. Description

1.1. This instrument makes amendments to:

- the Cattle Identification (Wales) Regulations 2007;
- the Trade in Animals and Related Products (Wales) Regulations 2011;
- the Seed Marketing (Wales) Regulations 2012;
- the Animal Health (Miscellaneous Fees) (Wales) Regulations 2018;
- the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018;
- the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019;
- the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019.

These amendments are to ensure that the statute book remains operable following the UK's exit from the EU and will address deficiencies in domestic legislation arising from EU Exit.

1.2. The instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ("the 2018 Act") defines as 29 March 2019 at 11.00 pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 ("the 2018 Act").

2.2 This instrument is subject to the affirmative procedure.

3. Legislative background

3.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 As highlighted above, the instrument makes amendments to several pieces of domestic legislation including those which in turn transpose or implement EU rules.

<u>The Cattle Identification (Wales) Regulations 2007</u>

4.2 The EU law ensures that bovines are traceable for the purposes of disease control. The domestic law sets out how these species must be identified, what records their keepers must maintain, how they must report their animals' movements, and how central competent authorities must record this information on central databases. Controls on identification and registration of cattle are set out in the EU Regulations listed below and are enforced in Wales by the Cattle Identification (Wales) Regulation 2007 ("the 2007 Regulations").

- Commission Regulation (EC) 494/1998 laying down detailed rules for the implementation of Regulation (EC) 820/97;
- Commission Regulation (EC) 509/1999 concerning an extension on the maximum period laid down for the application of ear-tags to Bison;
- Council Regulation (EC) 1760/2000 establishing a system for the identification and registration of bovine animals;
- Commission Regulation (EC) 1082/2003 laying down detailed rules for the implementation of Regulation (EC) 1760/2000;
- Commission Regulation (EC) 911/2004 implementing Regulation (EC) 1760/2000 as regards eartags, passports and holding registers;
- Commission Regulation (EC) 644/2005 authorising a special identification system for bovine animals kept for cultural and historical purposes; and
- Commission Implementing Regulation 2017/949 laying down rules for the application of Regulation (EC) 1760/2000.

<u>The Trade in Animals and Related Products (Wales) Regulations 2011</u>

4.3 The domestic legislation amended by this instrument is derived from four pieces of EU legislation which ensure that veterinary controls on EU trade and imports of live animals and animal products are safe with regard to animal and public health and that they meet the specific import conditions laid down in the relevant EU legislation:

- Council Directive 89/662/EEC concerning veterinary checks in intra-Community trade with a view to the completion of the internal market
- Council Directive 90/425/EEC concerning veterinary checks applicable in intra-Union trade in certain live animals and products with a view to the completion of the internal market
- Council Directive 91/496/EEC laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (91/496/EEC); and
- Council Directive 97/78/EC laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries

4.4 The 2011 Regulations establish a system for trade with other EU Member States in live animals and genetic material and for the importation of live animals, genetic material, products of animal origin and animal by-products from outside the European Union. They also list the EU legislation required to be complied with before animals or goods can be released from control at the port of importation.

The Seed Marketing (Wales) Regulations 2012

4.5 These Regulations set out requirements for marketing seed. In order to be marketed, the seed must comply with the requirements set out for certification, packaging, sealing and labelling. The Regulations also impose record-keeping requirements and require the holding of a licence to carry out certain operations such as marketing seed. The Welsh Ministers may license crop inspectors, seed samplers and seed testing stations to act under these Regulations. Breach of the Regulations is an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale. The marketing of seed and plant propagating material is regulated at Community level by EU Directives. The Directives prescribe processes to ensure minimum quality standards and traceability. The Directives also set out administrative provisions (including, where appropriate, provision for fees), impose record-keeping requirements and provide for the licensing of crop inspectors, seed samplers and seed testing stations. This instrument amends the Seed Marketing Regulations (Wales) 2012 which implement:

- Council Directive 66/401/EEC on the marketing of fodder plant seed
- Council Directive 66/402/EEC on the marketing of cereal seed
- Council Directive 2002/54/EC on the marketing of beet seed
- Council Directive 2002/55/EC on the marketing of vegetable seed
- Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants
- Commission Directive 2009/74/EC amending Council Directives 66/401/EEC, 66/402/EEC, 2002/55/EC and 2002/57/EC as regards the botanical names of plants, the scientific names of other organisms and certain Annexes to Directives 66/401/EEC, 66/402/EEC and 2002/57/EC in the light of developments of scientific and technical knowledge
- Commission Directive 2010/60/EU providing for certain derogations for marketing of fodder plant seed mixtures intended for use in the preservation of the natural environment
- Commission Decision 2011/180/EU implementing Council Directive 2002/55/EC as regards conditions under which the placing on the market of small packages of mixtures of standard seed of different vegetable varieties belonging to the same species may be authorised
- Commission Directive 2008/62/EC providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic

erosion and for marketing of seed and seed potatoes of those landraces and varieties; and

- Commission Directive 2009/145/EC providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties.

The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018

4.6 The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018 specify the fees the Welsh Ministers can charge and the Animal and Plant Health Agency (APHA) can collect for certain Animal Health Services, including sampling charges for Salmonella. The control of regulated Salmonella serovars is regulated for at the European level, under Regulation (EC) No. 2160/2003 of the European Parliament and of the Council, The control of Salmonella and other specified food-bourne zoonotic agents. This regulation provides for the control of salmonella, including testing and sampling regimes, through the establishment of National Control Programmes. On exiting the European Union, the Welsh Ministers will exercise the administrative functions currently undertaken by the Commission under Regulation (EC) No. 2160/2003, including the establishment of Control Plans to be implemented and adhered to across Wales. As these plans will not apply to the other administrations across the UK, the plans will be Control Plans for Wales, EU Exit Regulations amend the current title, namely “National Control Programme” to “Control Programme.

4.7 In line with Regulation (EC) No. 2160/2003, as part of the establishment of the Salmonella control plans, the Animal and Plant Health Agency (an executive agency of Defra, that delivers on the majority of our animal health requirements across GB) collect and test official samples in order to verify progress in achieving the agreed salmonella reduction targets. APHA also provides services to maintain an approved private laboratory network, and carries out proficiency tests for laboratories, to ensure consistency in test results on Salmonella samples. These tests are undertaken at a fee to the food business operator (FBO).

4.8 The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018, were introduced to provide for changes to fees payable (and already charged) in relation to seven different services that are delivered by APHA on our behalf, including the Salmonella Control Plan sampling and testing requirements. Under The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018, these fees were moved to full cost recovery, using the HM Treasury agreed model, based on the proposition that costs and services should be bourne by those users who benefit directly from the service provided, i.e. the FBOs in relation to Salmonella sampling. The

Regulations amend regulation 4and Schedule 1 by omitting “National” from the current references to a “National” Control Programme.

The Transmissible Spongiform Encephalopathies (Wales) Regulations 2018

4.9 These Regulations continue to enforce Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (“the EU TSE Regulation”). Part 1 of the Regulations provides that the Welsh Ministers are the competent authority for the purposes of the EU TSE Regulation, (except in Schedule 7 where the competent authority is the Food Standards Agency). Animals kept for the purposes of research (and to which the EU TSE Regulation do not apply) must be disposed of in accordance with Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption. Regulation (EC) No. 999/2001 of the European Parliament and the Council (amended over 60 times), lays down rules for the prevention, control and eradication of certain TSEs, including BSE in cattle and scrapie in sheep and goats. The directly applicable EU legislation was introduced by the EU as a result of the Bovine Spongiform Encephalopathy (BSE) epidemic in the late 1980s and early 1990s and have been updated frequently since to reflect the development and decline of that particular epidemic, combined with an improved understanding of the disease and emergence of scientific evidence.. One of the main and most important transmission routes of TSEs is through feed. Schedule 8 of the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018 prescribes the feed controls and prohibitions necessary to help prevent the transmission of TSEs, including banning the processing of processed animal proteins (PAP) and prohibiting the feeding of this material to ruminants and other animals, including prevention of entering the food chain. The EC Regulation is implemented by the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018, which are amended by this instrument.

The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019

4.10 The Regulations provide a technical update to The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997, ensuring animal produce remains safe for consumers from exposure to residue of veterinary drugs, and to prohibit the use of certain illegal drugs. The Regulations also bring Welsh veterinary legislation up to date alongside that of comparative UK and EU legislation. The Regulations include details of prohibited substances, sampling and analysis, and subsequent offences, penalties and enforcement.

The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019

4.11 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU ("the Plant Health Directive") establishes the EU plant health regime. Whilst protecting against plant health risks, the Plant Health Directive also provides for the trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material.

4.12 Part of the Plant Health Directive is implemented in Wales by the Plant Health (Wales) Order 2018 (S.I. 2018/1064) (W.223). The Order sets out obligations for the control and management of plant health risks from the import of plant material from third countries and the movement of such material within the EU single market, in order to protect biosecurity and the value of plant material to the economy and society. Similar but separate legislation operates in Scotland, England and Northern Ireland.

4.13 This instrument amends the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 which amends the Plant Health (Wales) Order 2018, the Plant Health etc. (Fees)(Wales) Regulations 2018 and revokes the Potatoes Originating in Egypt (Wales) Regulations 2004. The amendments made by this instrument deal with further deficiencies in plant health legislation arising on the UK's withdrawal from the EU.

Why is it being changed?

4.14 The changes made by the instrument are necessary to ensure that the current legislation continues to operate effectively after we leave the EU.

The Cattle Identification (Wales) Regulations 2007 ("2007 Regulations")

4.15 This instrument omits paragraph 13(2), Part 2 of Schedule 3 to the 2007 Regulations which provides that when cattle are transported outside Great Britain to a destination within the European Union the transporter must ensure that each animal is accompanied by its passport, and failure to do so is an offence The provision is omitted because post EU Exit, exporting cattle to the EU would be treated in the same way as export of cattle to a third country which is governed by the rules in 13(1), Part 2 of Schedule 3 of the 2007 Regulations, which requires the keeper to send the cattle passports to the National Assembly within seven days and failure to do so is an offence.

The Trade in Animals and Related Products (Wales) Regulations 2011 (the "2011 Regulations")

4.16 This instrument makes minor and technical changes to the 2011 Regulations to ensure that the amended instruments continue to operate effectively following the UK's withdrawal from the European Union. The changes include substituting the reference to "European Union" in Regulation 17 to "Wales" and the amending the reference "trade between" Member States to "imports from "Member States" in Regulation 38.

The Seed Marketing (Wales) Regulations 2012 (the "2012 Regulations")

4.17 This instrument amends a provision in the 2012 Regulations which is no longer appropriate following the withdrawal of the UK from the EU. To ensure the law functions correctly after exiting the EU a reference in Regulation 30 to "the Secretary of States acts as the Member State for the purposes of" is substituted with "Welsh Ministers may temporarily permit the marketing of seed not satisfying the requirements of minimum germination under conditions determined in accordance with".

The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018 (the "2018 Regulations")

4.18 This instruments make a minor corrections to the 2018 Regulations to ensure the law continues to function after exiting the EU. It omits "national" from regulation 4(1) and its title when referring to the control programme for salmonella and other specified food-borne zoonotic agents. This in no way relaxes the requirements of the controls in place to control salmonella and protect public health.

The Transmissible Spongiform Encephalopathies (Wales) Regulations 2018 (the "2018 Regulations")

4.19 This instrument makes a minor technical amendment to the 2018 Regulations to substitute the reference in regulation 5(6)(e) to "EU Commission" to "Welsh Ministers" as it will no longer be appropriate once the UK leaves the EU. This results in no policy change or production change for industry, and no relaxation of controls to prevent the spread of TSEs.

The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019 (the "2019 Regulations"

4.20 This instrument makes a minor technical amendment to the definition of "unauthorised substance" in regulation 2(1) of the 2019 Regulations. It substitutes the reference to "EU legislation" with "retained EU law" to reflect the status of EU legislation once the UK leaves the EU.

The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 (the "2019 Regulations")

4.21 Amendments are being made to the 2019 Regulations to facilitate trade with the Crown Dependencies. The Crown Dependencies are currently treated as part of the United Kingdom for the purposes of EU plant health legislation and therefore plants and plant products move between the Crown Dependencies, the UK and the rest of the EU under the same EU plant health rules. Details of the changes being made to the UK regime to address deficiencies arising from the UK's withdrawal from the European Union are set out in the explanatory memoranda to the 2019 Regulations and the Plant Health (EU Exit) Regulations 2019. Following recent discussions with the Crown Dependencies, it has been agreed that the Crown Dependencies will adopt similar controls as the United Kingdom to facilitate the trade in plants and plant products to the UK and vice versa. The changes made to the 2019 Regulations give effect to these arrangements.

4.22 A number of minor amendments are also being made to the 2019 Regulations to correct minor errors and to ensure that all identified deficiencies from EU Exit are dealt with appropriately. In particular, the 2019 Regulations are being amended to enable UK plant passports to contain certain information in relation to fruit plant propagating material and fruit plants. The 2019 Regulations are also being amended to ensure that people travelling from the EU will be subject to the same rules as they currently are when bringing plants and plant products into the UK in their passenger baggage.

What will it now do?

4.23 The instrument will ensure that legislation that underpins the following will operate effectively in the UK after leaving the EU:

- the traceability of livestock for disease prevention and control;
- trade in animals and animal related products with the EU, and halting any animals or products that are deemed to be a threat to animal and/or public health;
- seed marketing to ensure continuity of supply and marketing for an interim period after that withdrawal;
- animal health requirements in relation to Salmonella control programmes continue to be adhered to, and that sampling services are paid for, in order to maintain our control programme to reduce the prevalence of regulated serovars, and to protect both animal and public health;
- controls on TSEs continue to operate to protect animal and public health, through the prevention of prohibited materials entering the feed and food chain. Prohibitions concerning animal feeding to those animals under a TSE related movement restriction will continue to be enforced, unless that feed is produced and processed in a manner approved by the Welsh Ministers;

- the trade of plant material with Crown Dependencies and the maintenance of biosecurity.

5. Consultation

5.1 A four week consultation on the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019 was undertaken and ended on 26 February. No responses were received.

6. Guidance

6.1 There is no associated guidance in respect of this Statutory Instrument.

7. Regulatory Impact Assessment (RIA)

7.1 The impact on business, charities or voluntary bodies is minimal.

8. Monitoring & review

8.1 As this instrument is made under the Withdrawal Act, no extra review arrangement is required.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.

		committed to make the same statement when exercising powers in Schedule 2	A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate”. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

2. Good reasons

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. This is because the provisions ensure that protections provided by all the statutory instruments being amended continue to be operable after the UK leaves the European Union.”

3. Equalities

3.1 The Minister for Environment, Energy and Rural Affairs has made the following statement(s):

“The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

3.2 The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

SL(5)380 – The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. They amend subordinate legislation, that applies in relation to Wales, in the field of food marketing, labelling, classification and other related measures.

These Regulations also make provision in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 to update references to certain EU instruments in the Reporting of Prices of Milk Products (Wales) Regulations 2011.

Procedure

Affirmative

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2(vi) (defective drafting) in respect of this instrument.

The final paragraph of the preamble to the Regulations refers to section 59(3) of the Government of Wales Act 2006. That provision applies to statutory instruments that have not been approved by resolution of the Assembly, to which the negative procedure therefore applies. As these Regulations have been laid in draft for approval under the affirmative procedure, section 59(3) is not relevant. However, citing a superfluous provision does not affect the validity of the instrument or affect the substantive changes made by the Regulations, so no correction is required.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is not required.

Legal Advisers
Constitutional and Legislative Affairs Committee

Draft Regulations laid before the National Assembly for Wales under section 59(3) of the Government of Wales Act 2006 and paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

FOOD, WALES

The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which apply in relation to Wales, in the field of food marketing, labelling, classification and other related measures.

These Regulations also make provision in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

These Regulations update references to certain EU instruments in the Reporting of Prices of Milk Products (Wales) Regulations 2011.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before the National Assembly for Wales under section 59(3) of the Government of Wales Act 2006 and paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

FOOD, WALES

The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Made ***

Laid before the National Assembly for Wales ***

Coming into force in accordance with regulation 1(2) and (3)

The Welsh Ministers are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the common agricultural policy.

These Regulations make provision for a purpose mentioned in that section and it appears to the Welsh Ministers that it is expedient for any reference in these Regulations to EU instruments to be construed as a reference to those instruments as amended from time to time.

(**1**) S.I. 2010/2690. By virtue of paragraph 28(1) of Schedule 11 to the Government of Wales Act 2006, this designation has effect as if made under section 59(1) of that Act.

(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

The Welsh Ministers, in exercise of the powers conferred by section 2(2) of, and paragraph 1A(**1**) of Schedule 2 to, the European Communities Act 1972 and paragraph 1(1) of Schedule 2, and paragraph 21 of Schedule 7, to the European Union (Withdrawal) Act 2018(**2**), make the following Regulations.

There has been open and transparent public consultation during the preparation of these Regulations as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(**3**).

In accordance with section 59(3) of the Government of Wales Act 2006(**4**) and paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018 a draft of this instrument has been laid before the National Assembly for Wales and approved by a resolution of the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(2) These Regulations, apart from this regulation and regulation 5, come into force on exit day.

(3) This regulation and regulation 5 come into force on the day after the day on which these Regulations are made.

(4) These Regulations apply in relation to Wales.

The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009

2.—(1) The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009(**5**) are amended as follows.

(2) In regulation 2(2), for ““EU marketing rules” *(“rheolau marchnata’r UE”)*” substitute ““marketing rules” *(“rheolau marchnata”)*”.

(**1**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

(**2**) 2018 c. 16.

(**3**) OJ No. L 31, 1.2.2002, p. 1, to which there are no relevant amendments to Article 9.

(**4**) 2006 c. 32. Section 59(3) was amended by section 20(2)(c) of the Wales Act 2017 (c. 4).

(**5**) S.I. 2009/1551 (W. 151), as amended by S.I. 2011/1043, S.I. 2011/2486 (W. 270), S.I. 2013/3270 (W. 320) and S.I. 2018/1216 (W. 249) and to which there are other amendments not relevant to these Regulations.

(3) In the following provisions, for "EU marketing rules" substitute "marketing rules"—

(a) regulation 2(2), in the definition of "horticultural produce";

(b) regulation 3(2);

(c) regulation 4, paragraphs (4)(a), (5), (6), (7)(a) (in both places where it occurs), (7)(c) and (8);

(d) regulation 8, paragraphs (1)(f) and (2);

(e) regulation 9(1);

(f) regulation 10, paragraphs (1), (3) and (4);

(g) regulation 11(1), sub-paragraphs (a), (b), (c) and (d);

(h) regulation 12(2)(e);

(i) regulation 14, paragraphs (3)(a) and (5)(a)(ii);

(j) regulation 16(1)(c) (in both places where it occurs).

(4) In regulation 3(2), for "and Scotland inspection bodies or the European Commission" substitute "or Scotland inspection bodies".

(5) In regulation 4—

(a) in paragraph (8), for "European Union" substitute "United Kingdom";

(b) the heading becomes "Marketing rules offences".

(6) In regulation 7(3)(a), omit paragraph (ii).

(7) In the Schedule, for "Member States" substitute "the relevant authorities".

The Eggs and Chicks (Wales) Regulations 2010

3.—(1) The Eggs and Chicks (Wales) Regulations 2010(**1**) are amended as follows.

(2) In regulation 3(1)—

(a) after the definition of "the Act", insert—

""the animal welfare regulations" (*"y rheoliadau lles anifeiliaid"*) means the Welfare of Farmed Animals (Wales) Regulations 2007(**2**).";

(b) omit the definition of "Council Directive 1999/74/EC";

(c) omit the definition of "region";

(**1**) S.I. 2010/1671 (W. 158) to which there are amendments not relevant to these Regulations.

(**2**) S.I. 2007/3070 (W. 264), as amended by S.I. 2010/2713 (W. 229) and S.I. [insert reference to The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019].

(d) for the definition of "region of production", substitute—

""region of production" (*"rhanbarth cynhyrchu"*), in relation to eggs produced at a production site in Wales, and marketed by the producer direct to a final consumer by door-to-door selling or at a local public market, means—

(a) the area within a 80 kilometre radius of the boundary of the production site; and

(b) any part of Wales that is outside that 80 kilometre radius;".

(3) For regulation 13(3) substitute—

"(3) The conditions are the conditions in the following provisions of Schedule 2 to the animal welfare regulations—

(a) paragraph 2(d) (but not the requirement for perches not to have sharp edges and to be at least 15cm per hen);

(b) paragraph 2(e);

(c) paragraph 5;

(d) paragraph 6(a);

(e) paragraph 7(a).".

(4) For regulation 14(3) substitute—

"(3) The conditions are the conditions in the following provisions of Schedule 2 to the animal welfare regulations—

(a) paragraph 2(d) (but not the requirement for perches not to have sharp edges and to be at least 15cm per hen);

(b) paragraph 2(e);

(c) paragraph 5;

(d) paragraph 6(a);

(e) paragraph 7(a).".

(5) In regulation 19—

(a) for paragraph (2) substitute—

"(2) The authorised officer may be accompanied by such other persons as the officer considers necessary.";

(b) omit paragraph (14).

(6) In Schedule 2, in part 2, in the table—

(a) in column 2, for the 21st entry (that is, the entry corresponding to the entry for "Article 9(1)" in column 1) substitute—

"Regulation 4 of the Registration of Establishments (Laying Hens) (Wales) Regulations 2004(**1**)";

(b) in column 2, in the 26th entry (that is, the entry corresponding to the entry for "Article 12(2), fourth sub-paragraph" in column 1), for "Chapter III of Council Directive 1999/74/EC" substitute "Schedule 4 to the animal welfare regulations".

The Beef and Veal Labelling (Wales) Regulations 2011

4.—(1) The Beef and Veal Labelling (Wales) Regulations 2011(**2**) are amended as follows.

(2) In regulation 4—

(a) in paragraph (1)—

(i) before "EU legislation" insert "retained direct";

(ii) in sub-paragraph (a)(vi), after "third countries)" insert ", as read with Article 15za (transitional provisions)";

(iii) in sub-paragraph (b)(ii), after "(labelling)" insert "(but see paragraph (4))";

(iv) omit sub-paragraph (b)(viii);

(b) after paragraph (3), insert—

"(4) A person does not commit an offence under paragraph (1)(b)(ii) in relation to meat placed on the market on or before 31 December 2020, if the person—

(a) has failed to comply with Article 2(2)(b) of Commission Regulation (EC) No 1825/2000, but

(b) has complied with that Article as it applied immediately before exit day.";

(c) the heading becomes "Offences under retained direct EU legislation".

(3) In regulation 6(2), omit ", including any representative of the European Commission".

The Reporting of Prices of Milk Products (Wales) Regulations 2011

5.—(1) The Reporting of Prices of Milk Products (Wales) Regulations 2011(**1**) are amended as follows.

(**1**) S.I. 2004/1432 (W. 145) as amended by S.I. [insert reference to The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019] and to which there are amendments not relevant to these Regulations.

(**2**) S.I. 2011/991 (W. 145) as amended by S.I. 2013/3270 (W. 320) and S.I. 2018/1188 (W. 242).

(2) In regulation 2—

(a) for the definition of "Commission Regulation", substitute—

""Commission Implementing Regulation" (*"Rheoliad Gweithredu'r Comisiwn"*) means Commission Implementing Regulation (EU) 2017/1185 laying down rules for the application of Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards notifications to the Commission of information and documents and amending and repealing several Commission Regulations(**2**), and any reference to Annex I, Annex II and Annex III to the Commission Implementing Regulation means Annex I, Annex II and Annex III to the Commission Implementing Regulation as amended from time to time;";

(b) in the definition of "milk products", for the words "Article 2(3)(a) of, and Annexes 1.A and 1.B to the Commission Regulation" substitute "Point 7 of Annex I, Point 4 of Annex II and Point 9 of Annex III to the Commission Implementing Regulation".

(3) In regulation 3(1), for "Articles 2 and 3 of the Commission Regulation" substitute "Articles 7, 11 and 12 of the Commission Implementing Regulation".

6.—(1) The Reporting of Prices of Milk Products (Wales) Regulations 2011, as amended by regulation 5, are further amended on exit day as follows.

(2) In regulation 2—

(a) omit the definition of "Commission Implementing Regulation";

(b) for the definition of "milk products" substitute—

""milk products" (*"cynhyrchion llaeth"*) means whey powder, skimmed milk powder, whole milk powder, butter, cheeses (including commodity cheeses) and raw milk.".

(3) In regulation 3(1), omit "for the purposes of Articles 7, 11 and 12 of the Commission Implementing Regulation".

(**1**) S.I. 2011/1009.(W. 149).
(**2**) OJ No. L 171, 4.7.2017, p. 113.

The Poultrymeat (Wales) Regulations 2011

7.—(1) The Poultrymeat (Wales) Regulations 2011(**1**) are amended as follows.

(2) In regulation 2(1), for ""European poultrymeat provision" (*"darpariaeth cig dofednod Ewropeaidd"*)" substitute ""retained EU poultrymeat provision" (*"darpariaeth cig dofednod yr UE a ddargedwir"*)".

(3) In regulation 9(1) and (2)(a), for "European" substitute "retained EU".

(4) In regulation 11(2), omit sub-paragraph (b) and the "and" immediately preceding it.

(5) In regulation 12—

(a) in paragraph (9)(a), for "European Union" substitute "United Kingdom".

(b) omit paragraph (12).

(6) In regulation 14(1)(a), for "European" substitute "retained EU".

(7) The heading to Schedule 1 becomes "RETAINED EU POULTRYMEAT PROVISIONS CONTRAVENTION OF WHICH MAY RESULT IN THE ISSUING OF A COMPLIANCE NOTICE".

The School Milk (Wales) Regulations 2017

8.—(1) The School Milk (Wales) Regulations 2017(**2**) are amended as follows.

(2) In regulation 2(1)—

(a) before the definition of "applicant", insert—

""aid" ("*cymorth*") means aid granted pursuant to Article 23(1) of the Council Regulation and in accordance with the Commission Delegated Regulation and Commission Implementing Regulation (but see regulation 5(A1));";

(b) in the definitions of "Commission Delegated Regulations" and "Commission Implementing Regulation", for "Union aid" substitute "aid";

(c) omit the definition of "national aid";

(d) in the definition of "the residual costs", for "Union aid and national aid" substitute "aid";

(e) omit the definition of "Union aid".

(3) Omit regulation 3.

(4) In regulation 4—

(a) for "national aid", substitute "aid";

(b) the heading becomes "Additional aid for eligible pupils".

(**1**) S.I. 2011/1719 (W. 195) as amended by S.I. 2013/3270 (W. 320).

(**2**) S.I. 2017/724 (W. 174).

(5) In regulation 5—

(a) before paragraph (1), insert—

"(A1) In this regulation—

(a) "aid" includes—

(i) any aid granted before exit day pursuant to Article 23(1) of the Council Regulation as it applied before that day; and

(ii) any aid granted by the Welsh Ministers before exit day under regulation 3 of these regulations as it had effect before that day, and

(b) "applicant" is to be construed accordingly."

(b) in paragraph (1)—

(i) for "Union aid or national aid under regulation 3", in each of the three places where it occurs, substitute "aid";

(ii) for "Union aid or national aid under that regulation" substitute "aid";

(c) the heading becomes "Withholding and recovery of aid".

(6) In regulation 7(7), omit paragraph (a) and the "and" immediately following it.

(7) Omit regulation 9.

The Carcase Classification and Price Reporting (Wales) Regulations 2018

9.—(1) The Carcase Classification and Price Reporting (Wales) Regulations 2018(**1**) are amended as follows.

(2) In regulation 2(1)—

(a) in the definition of "classification", for "European" substitute "retained EU" (in both places where it occurs);

(b) for ""European beef provision" (*"darpariaeth eidion Ewropeaidd"*)" substitute ""retained EU beef provision" (*"darpariaeth eidion yr UE a ddargedwir"*)";

(c) for ""European pig provision" (*"darpariaeth moch Ewropeaidd"*)" substitute ""retained EU pig provision" (*"darpariaeth moch yr UE a ddargedwir"*)".

(3) Omit regulation 7(2)(b).

(4) Omit regulation 13(2)(b).

(5) In regulation 15, for "European" substitute "retained EU".

(**1**) S.I. 2018/1215 (W. 248).

(6) In regulation 26—

(a) for "European" substitute "retained EU" (in both places where it occurs);

(b) the heading becomes "Offences: retained EU beef provisions".

(7) In regulation 27—

(a) for "European" substitute "retained EU" (in each place where it occurs);

(b) the heading becomes "Offences: retained EU pig provisions".

(8) In regulation 36(1), for "European" substitute "retained EU" (in both places where it occurs).

(9) In Schedule 1—

(a) in the heading to column 1 of the table, for "European" substitute "retained EU";

(b) in the entry in the fourth row of column 3 of the table, for "Union" substitute "United Kingdom";

(c) the heading becomes "RETAINED EU PROVISIONS: BOVINE CARCASES".

(10) In Schedule 2—

(a) in the headings to column 1 of the tables in parts 1 and 2, for "European" substitute "retained EU";

(b) in the table in part 1, in the entry in the third row of column 3, for "methods authorised by the Commission" substitute "authorised methods";

(c) the heading becomes "RETAINED EU PROVISIONS: PIG CARCASES".

Name
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers
Date

Explanatory Memorandum to Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
5 March 2019

PART 1

1. Description

The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 ("this Instrument") amend out of date references to European and domestic legislation in food-related Welsh statutory instruments; and correct deficiencies in those instruments which arise as a result of the UK's exit from the European Union ("EU"). This Instrument will ensure that the statute book in Wales remains up to date and operable once the UK withdraws from the EU.

Those provisions which amend out of date references to European and domestic legislation in Welsh statutory instruments will come into force prior to the UK's withdrawal from the EU. These changes will ensure that the statute book is up to date.

Those provisions which fix deficiencies that arise as a result of the UK's withdrawal from the EU will come into force on 'exit day'. 'Exit day' is defined in section 20(1) of the European Union (Withdrawal) Act 2018 ("the 2018 Act") as 29 March 2019 at 11.00 pm.

This Instrument amends the Marketing of Fresh Horticultural Produce (Wales) Regulations 2009, the Eggs and Chicks (Wales) Regulations 2010, the Reporting of Prices of Milk Products (Wales) Regulations 2011, the Beef and Veal Labelling (Wales) Regulations 2011, the Poultrymeat (Wales) Regulations 2011, the School Milk (Wales) Regulations 2017 and the Carcase Classification and Price Reporting (Wales) Regulations 2018.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This Instrument does not amend primary legislation. The amendments in this Instrument are technical in nature and do not introduce policy changes.

The amendments include updating references to European and domestic legislation, and minor amendments to address deficiencies which arise in Welsh statutory instruments as a result of the UK's withdrawal from the EU. The changes made by this Instrument are necessary to ensure the effective and correct functioning of the statute book following the UK's exit from the EU.

3. Legislative background

This Instrument is being made using the powers conferred by section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act.

This Instrument is subject to the affirmative procedure in accordance with section 59(3) of the Government of Wales Act 2006, and paragraph 1(8) of Schedule 7 to the 2018 Act.

In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

The technical changes made by this Instrument are necessary to ensure the statute book in Wales is up to date, and operable following the UK's exit from the EU. The amendments include updating references to European and domestic legislation, and minor amendments to address deficiencies which arise as a result of the UK's withdrawal from the EU.

What did any relevant EU law do before exit day?

A summary of the domestic Regulations subject to amendment is set out in the following paragraphs

The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009

The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009 provide a statutory framework for the enforcement of European marketing rules in the fresh fruit and vegetable sector. This aligns with the common organisation of agricultural markets.

The Regulations designate the Welsh Ministers as the inspection body for Wales, and make a failure to comply with the marketing rules an offence.

The Eggs and Chicks (Wales) Regulations 2010

The Eggs and Chicks (Wales) Regulations 2010 make provision for the enforcement and execution of directly applicable EU marketing standards relating to eggs for hatching and farmyard poultry chicks, and eggs in shell for consumption (Commission Regulation (EC) No 617/2008, and Commission Regulation (EC) No 589/2008). They also make provision for the enforcement

of directly applicable EU controls for Salmonella serotypes with public health significance in relation to the marketing and use of eggs in shell for human consumption.

The Beef and Veal Labelling (Wales) Regulations 2011

The Beef and Veal Labelling (Wales) Regulations 2011 enforce in Wales Regulation (EC) No 1760/2000 which established a system for the identification and registration of bovine animals and the labelling of beef and beef products. The Regulations also enforce provisions relating to the marketing of the meat of bovine animals age 12 months or less, and provide rules for the provision of information for un-prepacked meat of bovine animals aged 12 months or less at the point of sale.

These Regulations are enforced by the local authority, port health authority or Welsh Ministers, and breach of the regulations is an offence.

The Reporting of Prices of Milk Products (Wales) Regulations 2011

The Reporting of Prices of Milk Products (Wales) Regulations 2011 revoked and replaced the Reporting of Prices of Milk Products (Wales) Regulations 2005 which made provision in Wales for the implementation of Commission Regulation (EC) No 562/2005 laying down rules for the implementation of Council Regulation (EC) No 1255/1999 as regards communications between the Member States and the Commission in the milk and milk products sector as amended from time to time.

The Regulations require milk processors to provide the Welsh Ministers with such information relating to the prices of certain milk products, as they may require by notice. Failure to comply with such a requirement is an offence.

The Poultrymeat (Wales) Regulations 2011

The Poultrymeat (Wales) Regulations 2011 make the failure to comply with the provisions of Commission Regulation (EC) No 543/2008 as regards to EU Marketing Standards for poultrymeat an offence and make provision in relation to the registration of slaughterhouses and producers as required by that Commission Regulation.

The School Milk (Wales) Regulations 2017

The School Milk (Wales) Regulations 2017 replaced the School Milk (Wales) Regulations 2008.

These Regulations make provision allowing the Welsh Ministers to pay national aid and to determine the type or class of educational establishment or milk products in relation to which national aid may be paid. The Regulations also provide that any national aid payment can be subject to terms and conditions, and the Welsh Ministers may withhold or recover any national payment.

The Carcase Classification and Price Reporting (Wales) Regulations 2018

The Carcase Classification and Price Reporting (Wales) Regulations 2018 revoked and replaced the Beef and Pig Carcase Classification (Wales) Regulations 2011.

These Regulations enforce Regulation (EU) No 1308/2013 of the European Parliament and of the Council which relate to European Union scales for the classification of carcases; and Commission Delegated Regulation (EU) No 2017/1182; and Commission Implementing Regulation (EU) No 2017/1184 which set out further details regarding the implementation of those scales.

These Regulations relate to the carcases of adult bovine animals (being animals aged eight months or more) and pigs. The Regulations provide for a licensing system for anybody who visually classifies bovine carcases and for the licensing of slaughterhouses using automated grading equipment for classifying such carcases. Breach of the licensing requirements is an offence

Why is it being changed?

After EU-Exit, without amendment certain provisions will be inoperable and, as a result, existing law will either be unclear or will not function effectively. This Instrument therefore uses powers in the 2018 Act to make predominantly technical changes to the above legislation to ensure that it remains coherent and continues to function correctly after the UK has left the EU. This will provide clarity to stakeholders.

What will it now do?

This Instrument will ensure the Welsh food-related regulations continue to be operable after the UK leaves the EU. This Instrument does not make any change to the way the Welsh food marketing regulations operate.

In relation to the changes proposed to the School Milk (Wales) Regulations, there will no longer be a distinction between ‘Union aid’ and national ‘aid’ - the Welsh Ministers will simply have the power to pay ‘aid’.

5. Consultation

A public consultation was run between 11 January 2019 and 19 February 2019. The consultation was bilingual and over 90 stakeholder experts and organisations were contacted directly, in addition to the consultation paper being published on the Welsh Government website.

Seven responses were received to this consultation – no concerns were raised in relation to the proposed amendments. All responses supported the proposals to update and correct deficiencies in EU derived domestic legislation.

6. Regulatory Impact Assessment (RIA)

It was not considered necessary to carry out a regulatory impact assessment for this instrument as no impact on the business, public or voluntary sectors are foreseen. The Regulations only introduce minor technical corrections. This is in line with the Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

Not applicable/required.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate". This is the case because the Regulations largely correct technical deficiencies in the Welsh legislation that will arise on exit of the EU. The Regulations ensures that food-related Welsh statutory instruments remain up to date and continue to operate effectively in Wales once we leave the EU. This is in line with government policy.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this draft instrument, and I have concluded they are a reasonable course of action". This is because the provisions ensure that protections provided by the food-related Welsh legislation continue to be operable after the UK leaves the European Union.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

> "The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> "In relation to the draft instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation

and any other conduct that is prohibited by or under the Equality Act 2010".

4.3 Little or no impact on equalities is expected.

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

Agenda Item 4.27

SL(5)381 – The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to the Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act) relating to the regulation of social workers and social care managers in Wales. Amendments are also made to the 2016 Act relating to exclusions to the scope of regulated advocacy services, to amend references to European Lawyers, and to the Mental Health Act 1983.

These amendments are required in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union without an agreement.

Procedure

Affirmative (uplifted from proposed negative on the recommendation of the Committee, after scrutiny under Standing Order 21.3B).

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) - that there appears to be doubt as to whether it is intra vires

As stated in the Explanatory Memorandum: "these Regulations revoke sections in the 2016 Act which relate to temporary and occasional service provision in Wales by social care professions, as they rely on reciprocal arrangements with the EEA which will no longer apply once the UK leaves the EU".

This appears to be removing a reciprocal arrangement of a kind mentioned in section 8(2)(c) or (e) of the European Union Withdrawal Act 2018 (the 2018 Act). If that is the case, paragraph 4 of Schedule 2 to the 2018 Act says that the Welsh Ministers have no power to make the Regulations unless they have consulted the Secretary of State.

There is no indication that such consultation has taken place, neither in the preamble to the Regulations nor in the Explanatory Memorandum. Therefore, we have little option but to question whether the Welsh Ministers can make these Regulations.

We ask the Welsh Government to confirm:

(a) whether the Regulations remove a reciprocal arrangement of a kind mentioned in section 8(2)(c) or (e) of the 2018 Act, and

(b) if they do, whether the Welsh Ministers have consulted with the Secretary of State.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

In our report on these Regulations during the sifting stage, we raised a concern about the impact these Regulations could have on the provision of social care in Wales.

We welcome the Welsh Government's response to this concern as set out in paragraph 2.4 of the Explanatory Memorandum, which states:

> "The Committee's concerns about the potential impact of the Regulations are noted but assurance is provided that any impact has been assessed as being very limited. No European workers have ever been registered on the visiting social care workforce registers maintained by Social Care Wales (SCW) which relate to the provision of temporary and occasional services by social workers and social care managers. It should also be noted that as at February 2019 there were fewer than 100 EU nationals registered as social workers or social care managers with SCW. Those who are already registered with SCW will be continue to be so registered post- exit day, and new applicants for registration from the EEA or Switzerland will be able to make the same application for registration as currently applies to international social care professionals."

Government Response

A government response is required to the technical scrutiny point raised in this report.

Legal Advisers
Constitutional and Legislative Affairs Committee
12 March 2019

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

SOCIAL CARE, WALES

PROFESSIONAL QUALIFICATIONS, WALES

The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) ("the 2016 Act") relating to the regulation of social workers and social care managers in Wales and make savings and transitional provision in connection with those amendments.

Regulation 14 amends the reference to "European lawyer" in paragraph 7 of Schedule 1 to the 2016 Act in line with the transitional arrangements made for lawyers from EEA states and Switzerland by the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

SOCIAL CARE, WALES

PROFESSIONAL QUALIFICATIONS, WALES

The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

Made

Coming into force in accordance with regulation 1(2) and (3)

The Welsh Ministers in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(**1**) make the following Regulations.

In accordance with paragraph 1(9) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

(**1**) 2018 c. 16.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019.

(2) Subject to paragraph (3), these Regulations come into force on exit day.

(3) Regulation 14(2) comes into force at 11.00pm on 31 December 2020.

(4) These Regulations apply in relation to Wales.

(5) In these Regulations, "the 2016 Act" means the Regulation and Inspection of Social Care (Wales) Act 2016(**1**).

PART 1

Amendments to legislation

Amendments to the Regulation and Inspection of Social Care (Wales) Act 2016

2. The 2016 Act is amended as follows.

3. In section 66(1) (interpretation of Parts 3 to 8), omit the definitions of "exempt person", "the General Systems Regulations", "national", "relevant European State", "visiting European social care manager part" and "visiting European social worker part"(**2**).

4. In section 74 (rules: fees)(**3**), omit subsection (3).

5. In section 80 (the register)(**4**), omit subsections (1)(c) and (d), (2)(c) and (d), and (3)(c) and (d).

6. In section 84 ("appropriately qualified")(**5**), omit paragraph (aa)(ii).

7. In section 85 (qualifications gained outside Wales – social workers)(**6**), omit subsection (1).

8. Omit section 85A (qualifications gained outside Wales – social care managers)(**1**).

(**1**) 2016 anaw 2.
(**2**) The definitions "visiting European social care manager part" and "visiting European social worker part" were inserted by S.I. 2016/1030, regulation 120(2).
(**3**) "European social worker part or visiting European social care manager part" was substituted by S.I. 2016/1030, regulation 122.
(**4**) Relevant amendments were made by S.I. 2016/1030, regulation 126(2), (3) and (4).
(**5**) Relevant amendments were made by S.I. 2016/1030, regulation 128(2) and (3).
(**6**) "- social workers" was inserted into the section heading by S.I. 2016/1030, regulation 130(2).

9. Omit section 90 (visiting social workers from relevant European States)(**2**).

10. Omit section 90A (visiting social care managers from relevant European States)(**3**).

11. Omit section 105 (other appeals: decisions made under the General Systems Regulations)(**4**).

12. In section 113 (continuing professional development), omit subsections (3) to (5)(**5**).

13. In section 164 (meaning of "registered person" in Part 6)(**6**)—

(a) for "the social worker part, an added part" substitute "the social worker part or an added part";

(b) omit "or the visiting European social worker part or visiting European social care manager part".

14.—(1) In Schedule 1 (regulated services: definitions), in paragraph 7 (advocacy services)—

(a) in sub-paragraph (4)—

(i) at the end of paragraph (a), omit "or";

(ii) for paragraph (b) substitute—

"(b) an individual to whom—

(i) regulation 5(1)(a) of the Revocation Regulations applies,

(ii) regulation 5(1)(b) of those Regulations applied and who becomes a registered European lawyer (by virtue of a decision on the individual's application or on appeal),

(iii) regulation 5(1)(c) of those Regulations applied and whose suspension is terminated (whether on appeal or otherwise), or

(iv) regulation 5(1)(d) of those Regulations applied and whose registration as a registered European lawyer has been reinstated, or

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(**1**) Inserted by S.I. 2016/1030, regulation 132.
(**2**) Relevant amendments were made by S.I. 2016/1030, regulation 134.
(**3**) Inserted by S.I. 2016/1030, regulation 136.
(**4**) Relevant amendments made by S.I. 2016/1030, regulation 138.
(**5**) Relevant amendments made by S.I. 2016/1030, regulation 140.
(**6**) "European social worker part or visiting European social care manager part" was substituted by S.I. 2016/1030, regulation 142(2).

(c) an individual for whom the provisions in regulation 4A or 5A of the Revocation Regulations have effect so as to allow that person to continue to practice as a lawyer in the United Kingdom after exit day.";

(b) after sub-paragraph (4) insert—

"(4A) In sub-paragraph (4)—

"registered European lawyer" ("*cyfreithiwr Ewropeaidd cofrestredig*") has the same meaning as in regulation 2(1) of the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119) as it had effect immediately before exit day;

"the Revocation Regulations" ("*y Rheoliadau Dirymu*") means the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019 (S.I. 2019/ XXX)."

(2) In Schedule 1, in paragraph 7, omit sub-paragraph (4)(b) and the definition of "registered European lawyer" in sub-paragraph (4A) (as substituted and inserted by paragraph (1) of this regulation).

Consequential amendment to the Mental Health Act 1983

15. In section 130H(7)(b) (independent mental health advocates for Wales: supplementary powers and duties) of the Mental Health Act 1983(**1**), omit "or the visiting European part".

PART 2

Savings and transitional provision

Pending applications

16.—(1) Where a relevant application is received before exit day, the 2016 Act continues to apply in relation to the application (including in relation to any appeal arising from it) on and after exit day as if the amendments made by Part 1 had not been made.

(2) In paragraph (1), "relevant application" means an application for—

(a) admission to the visiting European social worker part or the visiting European social

(**1**) 1983 c. 20; section 130H was inserted by the Mental Health (Wales) Measure 2010 (nawm 7), section 34. Subsection (7)(b) of section 130H was amended by the 2016 Act, Schedule 3, paragraph 39.

care manager part of the register kept under section 80 of the 2016 Act,

(b) renewal of registration in those parts of the register under section 86(2) of the 2016 Act,

(c) readmission to those parts of the register under section 80 of the 2016 Act following lapse of registration, or

(d) restoration to those parts of the register under section 96(2) or 97(2) of the 2016 Act.

Visiting social workers and visiting social care managers: saving of old law

17.—(1) This regulation applies where—

(a) immediately before exit day—

(i) a person had the benefit of regulation 12 of the European Union (Recognition of Professional Qualifications) Regulations 2015(**1**) in respect of the provision by that person of services as a social worker or a social care manager, and

(ii) section 90(3) or 90A(3) of the 2016 Act applied to the person, and

(b) the person continues to have that benefit on or after exit day.

(2) Despite the amendments made by Part 1, the following provisions of the 2016 Act continue to apply in relation to the provision of those services by that person on and after exit day, as they applied before that day, subject to the modifications specified in regulation 18 (interpretation of saved provisions)—

(a) in section 66(1) (interpretation of Parts 3 to 8), the definitions of "exempt person", "the General Systems Regulations", "national", "relevant European State", "visiting European social care manager part" and "visiting European social worker part";

(b) section 74(3) (rules: fees);

(c) in section 80, subsections (1)(c) and (d), (2)(c) and (d) and (3)(c) and (d) (the register);

(d) section 90 (visiting social workers from relevant European States);

(e) section 90A (visiting social care managers from relevant European States);

(f) section 113(3) to (5) (continuing professional development).

(3) Paragraph (2) has effect until—

(a) in the case of a person who is registered in accordance with section 90(3) or 90A(3) of

(**1**) S.I. 2015/2059.

the 2016 Act, the day on which the person's name is removed from the register under section 90(6) or 90A(6) of that Act as the case may be;

(b) in the case of a person who is treated as being registered under section 90(4) or 90A(4) of that Act, the day on which the person's entitlement to be registered under section 90(3) or 90A(3) of the 2016 Act ceases by virtue of section 90(5) or 90A(5) of that Act as the case may be.

Interpretation of provisions saved by regulation 17(2)

18. In so far as the following provisions of the 2016 Act continue to apply by virtue of regulation 17(2), they apply with the following modifications—

(a) in section 90 (visiting social workers from relevant European States)—

(i) subsection (1) is to be read as if "other than the United Kingdom" was omitted;

(ii) subsection (8) is to be read as if, for the definitions of "exempt person" and "the General Systems Regulations", there were substituted—

""exempt person" ("*person esempt*") means—

(a) a person who, immediately before exit day, was a national of a relevant European State,

(b) a person who, immediately before exit day, was a national of the United Kingdom and, at that time, was seeking access to, or pursuing, by virtue of an enforceable EU right, social work, or work as a social care manager, or

(c) a person who, immediately before exit day, was not a national of a relevant European State, but at that time was, by virtue of an enforceable EU right, entitled to be treated, for the purposes of access to and pursuit of social work or work as a social care manager, no less favourably than a national of a relevant European State,

and for the purposes of this definition, "enforceable EU right" ("*hawl UE orfodadwy*") means a right recognised and available in domestic law, immediately before exit day, by virtue of section 2(1) of the European Communities Act 1972 (c. 68);";

""the General Systems Regulations" ("*y Rheoliadau Systemau Cyffredinol*") means the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)—

(a) in relation to anything done before exit day, as they had effect at that time;

(b) otherwise, as (and only to the extent that) they have effect, on or after exit day, in relation to an entitlement which arose before exit day or arises as a result of something done before exit day;";

(b) in section 90A (visiting social care managers from relevant European States), subsection (1) is to be read as if "other than the United Kingdom" was omitted.

Internal Market Information System (IMI) Alerts

19.—(1) This regulation applies where—

(a) before exit day, a person is given notice of a decision made under regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015 to send an alert about the person, and

(b) either—

(i) the time limit for appeal against the decision under section 105(1)(c) of the 2016 Act expires on or after exit day, or

(ii) an appeal against the decision under that section is made, but not finally determined, before exit day.

(2) Despite the amendments made by Part 1, the following provisions of the 2016 Act continue to apply in relation to the decision on and after exit day as they applied before exit day—

(a) in section 66(1), the definition of "the General Systems Regulations";

(b) in section 90(8), the definition of "the General Systems Regulations";

(c) section 105(1) (but not paragraphs (a) and (b) of that subsection and subject to the modification specified in paragraph (3) of this regulation).

(3) For the purposes of paragraph (2)(c), section 105(1)(c) of the 2016 Act is to be read as if for "those Regulations" there were substituted "the General Systems Regulations (as they had effect at the time SCW's(**1**) decision was made)".

(**1**) *See* section 67(3) of the 2016 Act for the definition of Social Care Wales ("SCW").

(4) In disposing of an appeal against the decision on or after exit day, the tribunal has (instead of the powers specified in section 105(5) of the 2016 Act) the power—

(a) to confirm the decision, or

(b) if the tribunal considers that the alert should be withdrawn or amended, to direct that Social Care Wales take such steps as the tribunal thinks fit to notify the European Commission of the tribunal's decision.

Julie Morgan, Deputy Minister for Health and Social Services, one of the Welsh Ministers
Date

Explanatory Memorandum to The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Social Services and Integration Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Julie Morgan
Deputy Minister for Health and Social Services
5 March 2019

PART 1

1. Description

1.1 These Regulations make amendments to the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") relating to the regulation of social workers and social care managers in Wales. Minor amendments are also made to the 2016 Act relating to exclusions to the scope of regulated advocacy services, to amend references to European Lawyers, and to the Mental Health Act 1983.

1.2 These amendments are required in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union without an agreement.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 were laid for sifting on 29 January 2019. The Constitutional and Legislative Affairs Committee considered the Regulations on 11 February and laid their report on 12 February. The report can be found at: http: //www.assembly.wales/laid%20documents/cr-ld12151/cr-ld12152-e.pdf

2.2 The report recommends that these Regulations should be subject to the affirmative procedure because the Regulations raise matters of public, political or legal importance in three respects:

- They involve significant amendment of primary legislation
- The sensitive nature of the sector to which these Regulations relate,, and the unknown impact the amendments may have on social care in Wales
- The amendments are not technical.

2.3 The Deputy Minister for Heath and Social Services accepts the recommendations of the Committee that The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 should be subject to the affirmative procedure because they amend primary legislation.

2.4 The Committee's concerns about the potential impact of the Regulations are noted but assurance is provided that any impact has been assessed as being very limited. No European workers have ever been registered on the visiting social care workforce registers maintained by Social Care Wales (SCW) which relate to the provision of temporary and occasional services by social workers and social care managers. It should also be noted that as at February 2019 there were fewer than 100 EU nationals registered as

social workers or social care managers with SCW. Those who are already registered with SCW will be continue to be so registered post- exit day, and new applicants for registration from the EEA or Switzerland will be able to make the same application for registration as currently applies to international social care professionals.

3. Legislative background

3.1 This instrument is being made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

3.2 In accordance with the requirements of that Act the Deputy Minister for Health and Social Services has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

3.3 These Regulations are being made under the affirmative resolution procedure.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The European Union Directive 2005/36/EC ("the 2005 Directive") facilitates the free movement of prescribed professionals across the European Economic Area (EEA) and Switzerland by setting out a reciprocal framework of rules for the recognition of professional qualifications. This enables European Economic Area (EEA) and Swiss nationals to have their professional qualifications recognised and gain access in an EEA State or Switzerland to the regulated profession in which they are qualified in another EEA State or Switzerland, in order to work on a permanent or temporary basis.

4.2 The 2005 Directive is currently implemented via a main set of the regulations which set out the general approach, namely, the European Union (Recognition of Professional Qualifications) Regulations 2015 ("the 2015 Regulations") and then sectoral specific regulations. For the social care professions, the sectoral specific legislation is the European Qualifications (Health and Social Care Professions) Regulations 2016 ("the 2016 Regulations"). The 2016 Act makes express reference to the mutual recognition of professional qualification arrangements as provided for in the 2015 Regulations, as amended by the 2016 Regulations. Following exit day, the provisions of the 2015 Regulations which are currently referred to in the 2016 Act will no longer apply, as the UK will fall outside the remit of the 2005 Directive. The UK Government has already made amendments to the 2015 Regulations to reflect this fact and to correct any deficiencies which will arise in that legislation once the UK leaves the EU. .

4.3 Lawyers of EU states are permitted to practice in the UK in certain circumstances under the Establishment of Lawyers Directive 98/5/EC. The UK Government implemented the Directive through the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000 No. 1119). A lawyer of an Establishment Directive state also has the right to provide services in the UK on a temporary or visiting basis, under the Services of Lawyers Directive 77/249/EEC and the European Communities (Services of Lawyers) Order 1978. Both orders give effect to European Directives designed to facilitate the free movement of workers and mutual recognition of professional legal qualifications.

4.4 This instrument makes amendments to the 2016 Act relating to the regulation of EEA and Swiss social workers and social care managers in Wales, and to exclusions affecting the scope of regulated advocacy services, so that it operates effectively after exit date and corrects deficiencies which have arisen as a consequence of the UK leaving the EU.

Why is it being changed?

4.5 Following the UK's exit from the EU, the 2005 Directive will no longer apply to social workers and social care managers in the UK. The domestic legislation implementing the Directive, namely the 2015 Regulations, will therefore not operate effectively after exit day. The provisions within the 2016 Act which rely on the mutual recognition arrangements under the 2015 Regulations will also be inoperable after exit day.

4.6 After exit day, in the event of no deal, individuals with EEA and Swiss qualifications who are already registered with Social Care Wales (SCW), the social care workforce regulator in Wales, will have their registration maintained. New applicants will be able to seek recognition of their EEA and Swiss qualifications through the existing international registration system of SCW.

4.7 As is currently the case for international applicants, EEA and Swiss qualifications will be assessed against the equivalent UK qualification standards for social care professionals, and if they are found to be comparable, SCW will be required to recognise the qualification, with no additional tests to an applicant's practical skills. SCW will still be able check an applicant's language skills and whether there are concerns about their fitness to be registered. In cases where a qualification is not comparable, SCW will have discretion as to how it proceeds with the recognition process. There will be no obligation to offer compensatory measures where a qualification is not comparable to the UK qualification standard, as was previously the case under the 2005 Directive.

What will it now do?

4.8 The purpose of these Regulations is to ensure that the provisions of the 2016 Act which relate to the regulation of social workers and social care managers will continue to be operable in Wales after the UK leaves the EU.

4.9 Regulations 4 -13 of these Regulations revoke the sections in the 2016 Act which relate to temporary and occasional service provision in Wales by social care professionals, as they rely on reciprocal arrangements with the EEA which will no longer apply once the UK leaves the EU. The 2005 Directive sets out rules which facilitate the temporary and occasional provision of services, which allow EEA and Swiss professionals to practise across the EEA and Switzerland without the need for full registration with the relevant regulator. Providing temporary and occasional service allows the professional to remain established in their home state while practising in another state. However, none of these arrangements will apply to the UK following exit day. These changes are being made to reflect that and to remove from the 2016 Act references to the 2015 Regulations which will be revoked on exit day.

4.10 The 2016 Act does not define what advocacy services are but gives power to Welsh Ministers to do this in regulations. However the 2016 Act does provide some parameters within which the definition in regulations must fall. The 2016 Act excludes from the scope of regulation a service provided by a person in the course of a legal activity (within the meaning of the Legal Services Act 2007) and this includes where the person is a European lawyer within the meaning of the European Communities (Services of Lawyers) Order 1978. The preferential rights for European lawyers to practise in the UK after exit day are being revoked but a transitional period is being provided for European Lawyers who registered before exit day to continue to practise in England, Wales and Northern Ireland until 31 December 2020. Regulation 14 of these Regulations makes minor consequential amendments to the exclusions from the scope of regulated advocacy services, to reflect that for the transitional period (to 31 December 2020) the exclusion will extend to cover services provided by a European Lawyer in the course of a legal activity (within the meaning of the Legal Services Act 2007). Regulation 14 also includes wording to reflect the enhanced transitional arrangements which will apply to Swiss lawyers in the UK pursuant to the UK-Swiss Separation Agreement for lawyers.

4.11 Regulations 16 and 17 contain transitional and savings provisions relating to temporary and occasional service provision. Regulation 16 allows applications which have been made before exit day to provide services as a social worker or a social care manager in Wales on a temporary or occasional basis to be concluded under current arrangements as far as possible. Regulation 17 allows individuals already practising under temporary and occasional status in Wales to continue do so for up to one year. Under regulation 15 of the 2005 Directive, individuals seeking to provide temporary or occasional services in the UK had to make a declaration of their intention to do so to Social Care Wales every 12 months. Regulation 17 allows those individuals who made such a declaration before exit day to continue to provide temporary and occasional services until the expiry of the declaration.

4.12 The Internal Market Information system (IMI) is an online tool used by regulators to share information. The 2005 Directive allows regulators within the EEA and Switzerland to share details about applicants and qualifications. It also provides an Alert Mechanism which makes EEA and Swiss regulators aware of a professional's compromised fitness to practise or restrictions on their practice. The UK will no longer have access to IMI when it exits the EU. Regulation 19 provides that where before exit day an alert was issued in respect of a person, that person will still be able to bring an appeal against the decision to issue the alert in certain circumstances.

5. Consultation

5.1 As these amendments are technical in nature and only correct deficiencies which will arise in the 2016 Act as a result of the 2005 Directive no longer applying to the UK following the withdrawal of the United Kingdom from the European Union, no public consultation was undertaken. The purpose of the instrument is solely to make such changes as are required to enable the current legislative and policy framework to be able to continue to operate following exit day. The 2016 Act currently makes express reference to provisions of the 2015 Act, which will be revoked on exit day, and these Regulations make amendments to the 2016 Act to enable that Act to continue to operate effectively post-exit day.

5.2 Technical discussions concerning the proposed amendments to the provisions of the 2016 Act under these Regulations were held with Social Care Wales to ensure the amended registration procedures are operable.

6. Regulatory Impact Assessment (RIA)

No RIA has been undertaken as there is no significant impact on business, charities, voluntary bodies or the public sector resulting from this instrument. The changes are technical in nature and go no further than simply correcting deficiencies which will arise in the 2016 Act when, post exit day, the 2005 Directive no longer applies to the UK. These amendments made by these Regulations will have minimal impact on the sector because no European workers have ever been registered on the visiting social care workforce registers maintained by SCW, and the limited number of EU nationals who are registered as social workers or social care managers with SCW will not be affected by these Regulations and will have the right to continue working in Wales post-exit day.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statements

1.1 The Deputy Minister for Health and Social Services, Julie Morgan has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 “I accept the recommendation of the Constitutional and Legislative Affairs Committee that the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 should be subject to the affirmative resolution procedure as they make amendments to primary legislation”.

2. Appropriateness statement

2.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 “In my view The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

2.3 This is the case because the instrument only makes changes required to correct the deficiencies arising from the United Kingdom’s withdrawal from the European Union without an agreement.

3. Good reasons

3.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3.3 These are: The instrument makes amendments to domestic legislation relating to the recognition of qualifications of social care professionals. These amendments correct deficiencies arising from the United Kingdom’s withdrawal from the European Union without a withdrawal agreement and ensure an operable system for recognition at exit.

4. Equalities

4.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statements.

4.2 “This statutory instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.3 In relation to the statutory instrument, I, Julie Morgan, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

6.1 No criminal offences are being created in these Regulations. No criminal offences statements are therefore necessary.

7. Legislative sub-delegation

7.1 No new sub-delegation powers are being created by these amendments. No legislative sub-delegation statement is therefore required

8. Urgency

8.1 This statutory instrument is not being made urgently. No urgency statement is therefore required.

SL(5)341 – The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019

Background and Purpose

These Regulations amend the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (S.I 2017/580) (the "2017 Regulations").

Applications made on or after 1 April 2019 under sections 36 and 36C of the Electricity Act 1989 (the "1989 Act") relating to generating stations (or proposed generating stations) in Welsh waters which have or will have a capacity not exceeding 350 megawatts are to be made to the Welsh Ministers.

These Regulations amend the definition of relevant authority in the 2017 Regulations, to provide that the Welsh Ministers are the relevant authority where an application under section 36 or 36C of the 1989 Act is made (or to be made) by the Welsh Ministers. These Regulations make amendments to provision relating to consultation bodies. The Regulations further amend regulations 22 and 28 to insert reference to the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

The 2017 Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (and in exercise of powers contained in the 1989 Act). As such, the 2017 Regulations will become part of retained EU law on exit day.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
11 March 2019

SL(5)346 – The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019

Background and Purpose

These Regulations substitute the saving and transitional provisions in Regulation 65 (2) to (6) of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (the "2017 Regulations").

These Regulations also amend Schedule 2 to the 2017 Regulations, to add reference to the installation of overhead lines. As such, an environmental impact assessment may need to be undertaken in respect of such development before planning permission is granted.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations are made under the power in section 2(2) of the European Communities Act 1972 (in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment). As such, these Regulations will become part of retained EU law on exit day.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
8 March 2019

SL(5)369 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are made under the sections 1 and 2 of the Education (Fees and Awards) Act 1983 and sections 22 and 42(6) of the Teaching and Higher Education Act 1998. They make technical amendments to numerous Regulations relating to student finance. The amendments are necessary to ensure that various references throughout the amended Regulations continue to operate effectively after the UK exits the European Union.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations will form part of EU retained law even though they are not being made under the European Union (Withdrawal) Act 2018. The procedure is negative in accordance with the enabling powers.

Government Response

A government response is not required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 March 2019

Kirsty Williams AC/AM
Y Gweinidog Addysg
Minister for Education

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
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21 February 2019

Dear Mick

The Education (Student Finance) (Amendment) (EU Exit) (Wales) Regulations 2019

I intend to lay the above regulations in the National Assembly on or around 8 March 2019. The regulations will ensure support for EU students continues uninterrupted after the UK leaves the EU on 29 March 2019. The regulations will be subject to the negative procedure and will be made using powers under the Education (Fees and Awards) Act 1983, the Teaching and Higher Education Act 1998 and the Higher Education (Wales) Act 2015, rather than the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"). I thought a note in advance of the regulations being laid setting out the reasons why these regulations are being made under those powers rather than under the Withdrawal Act would assist you.

Student support has been made available by the Welsh Ministers to higher education students from the EU for some time. A student who falls into certain residence categories will, subject to meeting other criteria, be eligible for support from the Welsh Ministers and will benefit from home student status in relation to fees charged. The policy of the Welsh Ministers to support these students is not directly affected by the UK's exit from the EU. I issued a Written Statement on 2 July 2018 to announce a continuation of existing policy for the 2019/20 academic year.

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Student finance legislation employs various territorial and institutional descriptions. These include references to the EU and EEA and nationals of both. As the UK exits the EU, technical amendments are required to ensure the language of the legislation will continue to implement existing policy effectively.

Paragraph 1(1) of Schedule 2 to the Withdrawal Act contains a power for the Welsh Ministers to make regulations to "prevent, remedy or mitigate" any failure of "retained EU law" to operate effectively arising from the UK's withdrawal from the EU. There is an argument to be made that the proposed amendment regulations should be made under this power. However, I believe that the usual education law powers cited above are more appropriate for these purposes.

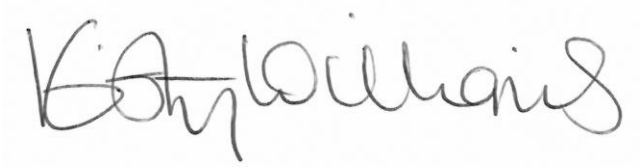
No new policy is being introduced and the proposed regulations will not do anything to recreate or replace EU law in domestic legislation. These amendments are in line with other technical amendments routinely made to student finance legislation using the cited powers.

An important consideration in this decision was accessibility of the law. The Committee noted the importance of maintaining the accessibility of the law in the EU Exit SI programme in its recent report on scrutiny of legislation to leave the EU. Student support legislation is extremely complex and often amended. Regulations made under the Withdrawal Act will not be directly connected to education legislation, making discovery of the appropriate legislation more difficult than it ought to be for the public. Equally, in terms of accessibility, the title of the regulations will include "EU Exit" therefore making it clear that there is a link to the departure of the UK from the EU.

I note that the Education (Student Fees, Awards and Support) (Amendment) (EU Exit) Regulations 2019 (SI 2019/139) which apply in England were laid before Parliament on 31 January 2019 and use education law powers rather than those contained in the Withdrawal Act.

I hope this assists your Committee.

Yours sincerely



Kirsty Williams AC/AM
Y Gweinidog Addysg
Minister for Education

Agenda Item 5.4

SL(5)377 – The Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to subordinate legislation applying in Wales in the field of food composition and labelling.

These Regulations, other than regulation 6, are to be made in exercise of the powers conferred on the Welsh Ministers by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Regulation 6 is made under section 16 of the Food Safety Act 1990 to amend the Honey (Wales) Regulations 2015 to set the method of analysis that food authorities must use to verify compliance with those Regulations' requirements.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
5 March 2019

SL(5)378 – The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are made in exercise of the powers conferred on the Welsh Ministers by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018, in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation applying in Wales in the field of food and feed hygiene and safety.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations had been laid for the purposes of sifting under the European Union (Withdrawal) Act 2018 in accordance with Standing Order 27.9A. The Committee agreed that the appropriate procedure for these Regulations was the negative resolution procedure.

Government Response

A government response is not required.

Legal Advisers
Constitutional and Legislative Affairs Committee
7 March 2019

Mark Drakeford AC/AM
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff

11 March 2019

Dear Mick

I am writing in response to your letter regarding your progress report on the scrutiny of regulations under the EU (Withdrawal) Act.

I would first like to take the opportunity to thank you for your Committee's scrutiny of the proposed negative Welsh SIs laid for sifting. The Committee has been fair and reasonable in its recommendations and I appreciate the support in the progress of this challenging work so that these SIs can come into force on exit day.

I was also heartened to see, in your report, the indication that the Assembly would manage, if necessary, any increase in workload arising from the UK's withdrawal from the EU. I had been concerned about being able to secure the necessary plenary and, particularly, committee time for all of the affirmative SIs that are required for EU exit, but based on your letter I can see that we should be able to proceed with confidence that the Assembly will have the capacity to scrutinise and debate these SIs before exit day.

The report laid in the Assembly addresses some issues that are general to the scrutiny of the exit SIs, and others that are specific to individual SIs. In terms of matters relating to specific SIs, these have already been addressed in detailed letters to you, so I will not return to those again here. Instead, I will address the points that apply more generally to the programme of legislating for EU exit.

I have read the Committee's report very carefully. I have to tell you that it simply does not match my daily experience of grappling with the extraordinary circumstances of Brexit and pursuing the Welsh Government's priority of protecting the welfare of citizens, as far as possible, in the event of a no deal Brexit. That has meant acting in the here-and-now to ensure immediate arrangements are in place, while preserving our ability to create new systems in the future.

I do not accept the National Assembly has been marginalised or bypassed. Co-operation

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with the UK Government in order to deliver an operable statute book, rather than marginalisation, is what has been happening. The context here is that, as you know, we are still having to work on the basis that 'no deal' is a real possibility. In July 2018 we were all working to a timetable in which the UK Government said it would reach an agreement at the October European Council, and that would have meant that much of the legislation could have been deferred to the transition period. As it is we have had to shoehorn it all into a highly compressed timescale. This is an unprecedented legislative exercise. The Welsh Government, or indeed the other Devolved Administrations, has never attempted anything on this scale since devolution began. Never has an entire Member State left the EU and a legislative exercise on this scale in the UK, in such a compressed time period, has probably never happened before.

The Report suggests that the Committee does not share this view, or our concern as to whether or not we have a functioning statute book on 30 March if No Deal really does happen.

I also reject the assertion that the Welsh Government has been complicit in a reduction in legislative competence through the use of concurrent powers. You will know that there has been an exchange of Ministerial correspondence with the Wales Office about a s109 Order to address the unintended restrictions on the Assembly's competence created by powers conferred in EU Exit SIs, and other legislation, which engage paragraphs 8, 10 and 11 of Schedule 7B of the Government of Wales Act. Officials are examining the issue in detail and considering how it can best be resolved. In the meantime, we operate within the law as it stands today.

More broadly, as the Committee knows, leaving the EU will mean that the UK will have to operate in a different way internally. Transferring functions to be exercised within the UK rather than on an international basis will inevitably mean that the UK Government and the Devolved Administrations will need to find new ways of working in order to manage these functions. There is a broader constitutional debate to be had than simply the future operation of Schedule 7B – a debate for which the Welsh Government has consistently called, at UK level

The report contains some detailed criticisms of the written statements issued under SO30C. The Committee has been diligent in writing to the Welsh Government about concerns with specific written statements. The templates and guidance issued to the officials preparing SO30C statements have been revised.

It has, however, become clear that we have a different understanding of the purpose of these written statements. Our interpretation of SO30C was that the purpose of these written statements was to notify the National Assembly that EU Exit SIs had been laid in Parliament. Members could then consider the SIs (and the supporting documents) laid in Parliament as they wished. Our approach has therefore been to provide a notification which brings the salient points of each SI to the attention of the Assembly. The contents of our statements relate to the requirements set out in SO30C.3, which itself originates from your Committee's report of July 2018 and recommendations 7 and 8 in particular.

It would appear from correspondence and the Committee's progress report that the Committee Members are more concerned with scrutinising the Welsh Ministers' rationale for giving consent and in scrutinising the Statements, rather than the SIs themselves. I had assumed that the SIs and EMs to which the notifications refer would be of more interest to Members, and the Statements have been drawn up accordingly.

Indeed, SO30C is very specific that the written statement is a notification, and has a clear list of points that the written statement must include. These changes to Standing Orders

were discussed at length between Welsh Government officials and Assembly clerks over last summer, with a shared understanding that these written statements were to notify Assembly Members of SIs laid in Parliament, rather than to convey a detailed policy rationale for the giving of consent. If it had been foreseen that the Committee would wish to take that approach, SO30C could have been worded differently and could have required that the statement included the information that would facilitate that approach (such as an overview of the policies within the SIs, a justification of why a UK approach was preferred over a Welsh approach etc).

I hope, following the action taken regarding the templates and guidance for officials, SO30C statements are now providing the Committee with the information that supports the approach to scrutiny that it has chosen to take, though we have been following the procedures agreed with the Assembly last summer.

I have noted that the Committee would prefer the Welsh Ministers to lay motions for all Statutory Instrument Consent Memorandums.

Standing Orders make it clear that it is the choice of Ministers or Members to lay a motion. That Suzy Davies AM was able to lay a motion to debate the Marine Environment SICM indicates that the Standing Orders are operating as intended. As I indicated above, as your report states that the Assembly would, if necessary, have been able "to manage any increase in workload" arising from Brexit, I am encouraged that Assembly Members would have the resources at their disposal to draft a memorandum and lay a motion in the Assembly if they felt that this was essential.

I note that the Committee feels the balance between Welsh SIs and UK SIs is not right. That is a matter of judgement. It is a matter of fact that we have communicated consistently since September 2018 that we anticipate around 150 EU Exit SIs to be made in Parliament in areas devolved to Wales and around 50 EU Exit SIs to be laid in the National Assembly. Those projected numbers, for both UK and Welsh SIs, have since declined, but only very slightly, as the process has developed. The Committee might not agree with the balance but it cannot have been surprised at it.

It should also not be a surprise to the Committee that the UK EU Exit SIs have preceded the Welsh SIs, and so they will have inevitably seen more UK SIs than Welsh SIs at the start of the scrutiny period. We have been very clear from the beginning of the process that almost all the Welsh SIs are interdependent with the UK SIs and cannot be laid ahead of them.

We have a difference of view about the consistency between the course of action taken by Welsh Ministers and the provisions of the Intergovernmental Agreement. The SIs to which we have consented do not make new policies. Rather they put existing approaches on to a domestic footing. In each case the approach taken is to ensure that the underlying policy remains in place, through agreement with the UK Government. Therefore, even if there are policy choices being made, these are limited to what is necessary to ensure the law operates successfully on exit day.

To give an example, EU law may currently stipulate that a particular function is to be exercised by an EU institution. Evidently, after the UK has left the EU the institution in question will no longer exercise that function in relation to the UK.

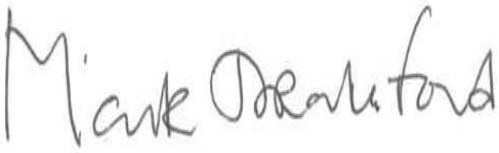
A decision is necessary to identify a domestic equivalent to the EU body. The Committee appear to regard this as a policy choice. It is clearly not. The policy is to locate a function with a responsible body. The identification of that body is the mechanical expression of that policy, which remains consistent throughout.

You also raise the issue of directly applicable EU law. None of the regulations laid in the National Assembly have so far amended this body of EU law. SIs amending directly applicable EU law are being considered on a case-by-case basis and the Welsh Ministers have kept this approach under review. In the cases seen so far, the Welsh Government's approach has been to retain a UK-wide approach, rather than create new policies and delivery structures in the immensely constrained circumstances of Brexit.

Powers to amend directly applicable EU law were included in the EU (Withdrawal) Act at the request of the Welsh Government to ensure parity between the powers being conferred on the Welsh Ministers and UK Government Ministers. Having the powers to amend directly applicable EU law means that taking a UK-wide approach has been a conscious policy choice rather than one we are compelled to accept due to a lack of powers to do otherwise. It also gave the Welsh Ministers the flexibility to consider how best to make legislation addressing directly applicable EU law.

Finally, you raise the point that the approach that has been adopted makes the Welsh statute book less accessible. It must be recognised that this legislation is made in the context of leaving a well-established international legal system and replacing it with a UK-wide one where it has not necessarily been agreed what will happen in the longer term. We have endeavoured to preserve clarity and accessibility as much as possible, indeed, one reason for using UK SIs for UK-wide systems is to provide greater accessibility of law by having one SI for the UK rather than four separate SIs across all the administrations. Ultimately, our priority has been the protection of citizens and businesses. A part of the move to the new situation of a post-Brexit world will be to enhance the accessibility and clarity of the law while putting the longer term solutions in place.

Yours sincerely



MARK DRAKEFORD

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol
National Assembly for Wales
External Affairs and Additional Legislation Committee

Mark Drakeford AM
First Minister of Wales

14 March 2019

Dear Mark,

The Assembly's role in legislating for Brexit

The External Affairs and Additional Legislation Committee agreed to write in support of the concerns expressed by both the Llywydd and the Constitutional and Legislative Affairs Committee in relation to the role of the Assembly in the process of legislating for Brexit.

We considered the Assembly's role in the process of legislating for Brexit during the first phase of our work as a committee, in the autumn of 2016.

We developed our position following publication of the UK Government's White Paper on legislating for Brexit, in March 2017.

At that time, we reported our concern that the role of the devolved legislatures had not been adequately considered and the process of legislating for Brexit posed risks in terms of the devolution settlement and the control of powers delegated to Welsh Ministers.

In responding to the EU (Withdrawal) Bill's publication in the autumn of 2017, we expressed further concerns about the role of the Assembly and the ability of the Welsh and UK Governments to manage the process of legislating for Brexit in devolved areas through the UK Parliament.

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Whilst we believe we made some progress, including securing recognition of the role of devolved legislatures in the process on the floor of the House of Commons, our objectives for improving the EU (Withdrawal) Bill so as to ensure the Assembly's role were not met.

In recent months, we have considered the letter that the Llywydd sent to you in relation to legislating for Brexit and the role of the Assembly. This captured many of the concerns that we, as a Committee, have about the way in which the process of legislating for Brexit has been managed by the Welsh and UK governments. Whilst, on the basis of your response to the Llywydd, we might hold different views on the reason for the Welsh Government asking the UK Government and Parliament to legislate on its behalf, the net effect is the same – a diminished role for the Assembly in legislating for Brexit.

This is significant both in terms of limiting the ability of Assembly Members to play the full role that they were elected to perform and in distancing decisions on laws in devolved areas from the people of Wales. These laws, when passed to the UK Government for action, are made in English only.

The Constitutional and Legislative Affairs Committee leads on the scrutiny of subordinate legislation. However, we have maintained a keen interest in the process of legislating for Brexit and receive regular updates from our officials on progress and in our scrutiny of Ministers. This extends to monitoring all Brexit-related legislative consent issues, alongside the subordinate legislation being made in the Assembly and in Westminster.

The CLA Committee's recent report, *Scrutiny of regulations under the European Union (Withdrawal) Act 2018: Progress report*, further confirmed the concerns that we have about the use of concurrent powers.

We endorse this important report and add our support to the conclusions it draws.

We were particularly concerned to learn that two sets of regulations appear to be in breach of the Intergovernmental Agreement as the UK Government is utilising powers under the EU (Withdrawal) Act 2018 to enact new policy in devolved areas, particularly given the assurances given to us by Welsh Ministers that these powers will be used solely for technical changes.

Last week, we published our report on the Trade Bill Supplementary Legislative Consent Memorandum. In that report, we concluded that:

> "When we consider the change to the devolution settlement, the CLA Committee's view, and our own concerns about how the use of concurrent powers under the European Union (Withdrawal) Act 2018, we conclude that our original concern about the provision of concurrent powers was well founded."

Whilst this letter has focused on the use of concurrent powers in the most part, our concerns extend to the use of UK Bills for Brexit-related legislation that could have been considered by the Assembly.

In relation to the legislative consent process for primary legislation, we characterise it as follows in our recent report on the Trade Bill:

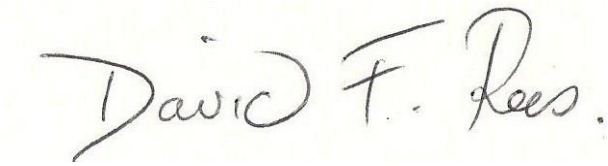
"The legislative consent process does not allow for a nuanced interaction with the legislation under scrutiny. Rather, it offers a blunt and binary choice of granting consent for the provisions as drafted or rejecting them entirely."

This stands in unfavourable contrast to the Assembly's Bill scrutiny procedures, even under expedited circumstances.

We continue to monitor the process of legislating for Brexit and look forward to discussing some of these issues with you at our meeting on 25 March 2018.

I am copying this letter to the Llywydd and the Chair of Constitutional and Legislative Affairs Committee.

Yours sincerely,



David Rees AM

Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

David Rees AM
Chair
External Affairs and Additional Legislation Committee
National Assembly for Wales

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11 March 2019

Dear David,

I am writing to you following my appearance at the External Affairs and Additional Legislation Committee on 4 February to provide you with more detailed information about the Welsh EU Exit SI programme, the progress to date and possible future SIs relating to EU Exit.

By the week of my appearance, 29 proposed negative procedure statutory instruments had been laid before the National Assembly for consideration by the Constitutional and Legislative Affairs Committee (CLAC) for sifting, as required for SIs proposed for the negative procedure to be made under the EU (Withdrawal) Act 2018. Of these 29, the committee agreed that 27 should be made by the negative procedure. All of these have now been laid before the National Assembly. Three further SIs have been made under the negative procedure but not using powers under the EU (Withdrawal) Act. All of these negative SIs are being laid in time for them to come into force by 29 March.

CLAC considered two of the proposed negative SIs should be subject to the affirmative procedure and the Welsh Government accepted both recommendations, laying a draft of the first as affirmative on 19 February and the second on 5 March. Including these, we have laid 11 affirmative SIs to be considered by the National Assembly ahead of exit day. For ease of reference, I have attached a table of all the EU Exit SIs laid before the National Assembly to date.

Additionally, we are anticipating up to eight SIs, which are intended to come into force after 29 March. The majority of these would make amendments to Welsh law in consequence of UK legislation, which has not yet been made. For example, we may need to make amendments to the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 but these are dependent on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, which is undergoing Parliamentary scrutiny. Further SIs may be required as a result of emergency legislation made in response to a no deal exit on 29 March, should that situation occur.

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The remainder of the SIs are unrelated to UK legislation currently in Parliament and will come into force after exit day as their provisions do not need to take effect until a later date. We are endeavouring to lay these at the earliest opportunity to enable scrutiny of the complete picture of EU Exit SIs.

I hope this information is of use to the committee in providing a more detailed context for your consideration.

I am copying this letter to Mick Antoniw AM, chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely,

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

List of Welsh EU Exit Statutory Instruments Laid in the National Assembly to date

Negative Procedure

1.	The Elections (Wales) (Amendment) (EU Exit) Regulations 2019
2.	The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (EU Exit) Regulations 2019
3.	The Environmental Noise (Wales) (Amendment) (EU Exit) Regulations 2019
4.	The Equality Act 2010 (Statutory Duties) (Wales) (Amendment) (EU Exit) Regulations 2019
5.	The Animal By-Products and Transmissible Spongiform Encephalopathies (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
6.	The Livestock (Records, Identification and Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
7.	The Radioactive Contaminated Land (Modification of Enactments)(Wales) (Amendment) (EU Exit) Regulations 2019
8.	The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019
9.	The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendment) (Wales)(EU Exit) Regulations 2019
10.	The Service Charges (Consultation Requirements) (Wales) (Amendment) (EU Exit) Regulations 2019
11.	The Zoonotic Disease Eradication and Control (Amendment) (Wales) (EU Exit) Regulations 2019
12.	The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
13.	The Equine Identification (Wales) (Amendment) (EU Exit) Regulations 2019
14.	The Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
15.	The Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019
16.	The Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019
17.	The Air Quality Standards (EU Exit) (Wales) Regulations 2019
18.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
19.	The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
20.	The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019
21.	The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019
22.	The Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
23.	The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
24.	The Local Government Finance (Amendment) (EU Exit) (Wales) Regulations 2019
25.	The Marketing of Seeds and Plant Propagating Material (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

26.	The Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019
27.	The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
28.	The Education (Student Finance) (Amendment) (EU Exit) (Wales) Regulations 2019 (Not made under Section 8 of the European Union (Withdrawal) Act 2018)
29.	The Sea Fish Licensing (Wales) Order 2019 (Not made under Section 8 of the European Union (Withdrawal) Act 2018)
30.	The Sea Fishing (Licences and Notices) (Wales) Regulations 2019 (Not made under Section 8 of the European Union (Withdrawal) Act 2018)

Affirmative Procedure

1.	The Local Authorities Capital Finance and Accounting Wales (Amendment)(EU Exit) Regulations 2019
2.	The Common Agricultural Policy (Amendment) (Wales) (EU Exit) Regulations 2019
3.	The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019
4.	The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
5.	The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (Changed to Affirmative after sifting)
6.	The Plant Health (Forestry)(Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
7.	The Plant Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
8.	The Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019
9.	The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 (Changed to Affirmative after sifting)
10.	The Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019
11.	Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/KS/0051/19

Mick Antoniw AM
Chair,
Constitutional and Legislative Affairs Committee
National Assembly for Wales
SeneddCLA@assembly.wales

8 March 2019

Dear Mick,

Further to my letter of 25 January updating you on the Welsh Ministers' approach to the UK Government's laying of the State Aid (EU Exit) Regulations in Parliament, I am writing to inform you of the Welsh Government's position in respect of a connected Statutory Instrument: **the Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2019** ('the PSO SI').

As you are aware the Department for Business, Energy and Industrial Strategy laid the **State Aid (EU Exit) Regulations 2019** in Parliament on 21 January. It is our position that State aid is not a reserved matter and, under the terms of the Intergovernmental Agreement, we believe the consent of Welsh Ministers should have been sought prior to the laying of the instrument. In addition, we are disappointed that the regulations as they have been laid do not provide for decision making by mutual consent and do not provide for a State aid regime that is truly owned by all four Governments in the UK.

The PSO SI is affected by our position on State aid. Regulation 1370/2007 sets out the conditions under which operators of public service obligations (PSOs) are to be compensated for the costs they incur as a result of carrying out public service obligations. Regulation 1370 provides for a sectoral exemption from the general State aid rules (for public passenger transport services by rail and road), releasing competent authorities from the need to acquire prior state aid approval from the Commission in each case where a public service operator is compensated, provided that any compensation complies with the requirements of Regulation 1370/2007.

However, we recognise the need to ensure that the statute book is operable on exit day and acknowledge that the corrections to legislation underpinning the rail franchising regime established by this SI are vital to the continuation of rail services across the UK.

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Furthermore, there is the ongoing engagement with officials of the Department for Business, Energy and Industrial Strategy in developing a Memorandum of Understanding for the operation of a UK wide State aid regime.

The Department for Transport has informed us that the SI had to be laid for sifting on 28 January in order to give sufficient time for it to come into force on exit day if the sifting committees had determined the SI should follow the affirmative procedure. However, the Explanatory Memorandum states that the instrument will not be made without the consent of the Welsh Ministers.

It is clear to us that, exceptionally, the impending deadlines limit the scope for negotiation around this complex point, which has remained unresolved for many years. We are therefore willing to take a pragmatic approach in order to protect citizens, and grant consent to the SI as a whole on the basis that there is no policy divergence and that the concerns of the Devolved Authorities will be addressed, though this is without prejudice to our position on legislative competence in respect of State aid.

The Minister for Economy and Transport has written to the Parliamentary Under Secretary of State for Transport, Andrew Jones MP, responsible for this SI, to convey this opinion, and discussions will continue between both administrations.

We will inform Assembly Members of this approach via a written statement shortly.

Yours sincerely,

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Ein cyf / Our ref: MA-L/VG/0239/19

Chairs of Constitutional and Legislative Affairs Committee
and Health, Social Care and Sport Committees
National Assembly for Wales
Cardiff Bay
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11 March 2019

Dear Chairs,

Following the tabling of the Supplementary Legislative Consent Memorandum for the Healthcare (International Arrangements) Bill, the UK Government has tabled an amendment which removes the consequential Henry VIII power in the Bill in Clause 5(3).

The Bill as introduced provided a regulation making power which allowed the Secretary of State to amend, repeal or revoke primary legislation. This would include a Measure or Act of the National Assembly. I had written to UK Government to express my concerns about this regulation making power. If the Government amendment is accepted the Bill will no longer allow the Secretary of State to amend, repeal or revoke Welsh Primary Legislation. This is a positive outcome which reflects the pressure placed on UK Government in relation to this excessive power.

The UK Government has also tabled an amendment which sunsets the regulation-making powers in clause 2(1)(a) and 2(1)(b) so they can be exercised for a stated period of five years only. These clauses are necessary in the short term to mitigate any detrimental effects of a sudden change in healthcare for UK nationals living in the EU as a result of a no deal Exit as they allow the UK Government to make unilateral provision. This amendment is a welcome limiting of the scope of the Bill. The Bill could continue to be used to give effect to healthcare agreements beyond this five year period.

I do not consider that these amendments require a further Supplementary Legislative Consent Memorandum as they either limit or remove powers which were set out in the existing memoranda. They do not make relevant provision for the first time.

A further UK Government amendment relating to financial reporting of payments under clause 1 has been tabled. As the National Assembly could make an equivalent provision in an Assembly Bill in relation to payments for pre-authorised treatment abroad funded by the NHS in Wales, this provision would under normal circumstances require a further

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Supplementary Legislative Consent Memorandum. There is now not sufficient time to prepare and lay such an LCM but I wanted to bring this welcome amendment to the attention of Members.

These amendments would improve the Bill further, and I continue to recommend consent to the Bill through the LCM.

I am copying this letter to all Assembly Members for reference ahead of the debate.

Yours sincerely,

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L CG 0274 19

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales

08 March 2019

Dear Mick,

LEGISLATION (WALES) BILL

During my evidence to the Committee on 18 February, I committed to provide you with further information about section 8 of the Bill. Please find attached a note on this at Annex A.

I also mentioned that I had asked officials to prepare a diagram illustrating the complex nature of legislation currently, and how this will consolidated and codified into a future Code of Welsh Law. Given the references to planning law that have been made during stakeholder evidence, we have used this as the example. I hope that Annex B will be useful to the Committee, as it also gives a sense of how the Cyfraith Cymru/Law Wales website could be used to publish Codes and explanatory material in the future.

Yours sincerely,

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

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Annex A: comments on section 8 of the Bill

Purpose and effect of section 8

1. Section 8 of the Bill provides that, where a term used in an Act or instrument has a statutory definition, "other parts of speech and grammatical forms or modifications" of that term are to be interpreted in accordance with the definition. One of the purposes of section 8 is to enable legislation to be shorter and more consistent, in cases where a definition of one term is intended to govern the meaning of related terms.

2. For example, if an Act created a registration scheme, it might define "the register". The Assembly might intend words like "to register" and "registration" to be interpreted by reference to that register. That intention might be so obvious that the Act did not need to mention it. If the intention was not obvious, the drafter would add wording at the end of the definition of "the register" to make this clear, such as "related expressions are to be interpreted accordingly". Section 8 avoids the need to repeat this kind of wording in every case, and reduces the risk of different drafters adopting inconsistent approaches.

3. The Committee received evidence that section 8 "goes too far".[1] There is a sense in which this is true, because section 8 creates a presumption about what legislation is intended to mean, which will not be right for all Acts and instruments. However, the same is true for every rule in Part 2 of the Bill: they are all general presumptions, which are included because the Government believes that they are right for the majority of Welsh legislation. But there will be cases where legislation needs to work differently. That is why most of the rules in Part 2 are subject to any express provision to the contrary or to any context which requires a different interpretation.

4. It was suggested in evidence that any problem with the application of section 8 might be "resolved by interpretation" and that the intended meaning would usually be clear from the context.[2] We agree that there may be cases where a statutory definition does not apply to a related term because the context makes it clear that a different result is intended. However, we do not see this as a weakness; rather, it is an integral feature of how Part 2 of the Bill is intended to operate.

Relationships between nouns and verbs

5. The Committee was referred to Professor Daube's observation that "agent nouns" (which refer to people who do things) and occasionally "action nouns" (which refer to what is done) may have narrower and more specific meanings than the corresponding verbs.[3] Thus not everyone who bakes is a baker, and it is not only a cook who cooks.[4]

6. These observations have some force as generalisations about what words tend to mean in ordinary language, if they are used without any further explanation. But the meanings of words always depend on the context in which they are used, and it is not hard to think of contexts in which a "cook" or "baker" is just intended to mean a person who cooks or bakes, not a person who does so professionally or in any special way. A person who says "I am a good cook" is not necessarily using "cook" in any special sense.

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[1] Oral evidence of Professor Thomas Glyn Watkin, 14 January 2019, paragraphs 157, 161.

[2] Written evidence of Professor Watkin, 5 January 2019, paragraph 23; oral evidence, paragraphs 153, 155.

[3] Written evidence of Professor Watkin, paragraph 23; oral evidence, paragraph 150. The point was made by Professor Daube in a 1966 lecture on Roman Law, as part of an argument against drawing false historical conclusions from the common linguistic origins of the names of legal concepts. In particular, he noted that action nouns may emerge considerably later than the verbs from which they are derived.

[4] It may also be possible to argue that agent nouns tend to have narrower meanings than the corresponding action nouns. For example, it could be said that "not all baking is done by bakers".

7. Whatever validity these linguistic claims may have as descriptions of ordinary usage, they do not seem to be arguments about how words are used in the specific legislative contexts where section 8 of the Bill will apply. Section 8 of the Bill is not dealing with the meanings of words in general, but with cases where legislation uses words and expressions which are related to other terms that have been given statutory definitions. The arguments have much less force in this context.

8. An important part of the context of section 8 is that it only applies where an enactment provides a definition of a word or expression. There are two broad types of situation where legislation includes definitions. One is where the legislation is creating a new legal concept or label that would not otherwise have a meaning, such as "Welsh subordinate instrument" in section 3(2) of the Bill. The other is where the legislation is using an ordinary word or phrase, but there is a need to clarify or alter the ordinary dictionary meaning of that word or phrase for the purposes of the legislation, as in the definition of "Wales" in Schedule 1 to the Bill. While legislation should not use words in ways that are misleading, it may need to give them more precise meanings than they usually have.

9. The arguments made in evidence imply that section 8 of the Bill could mean that wide definitions of verbs were inadvertently applied to nouns which were intended to have narrower meanings. However, that suggests that legislative drafters might go to the trouble of providing precise definitions of verbs, but then use related nouns loosely without taking account of those definitions or of section 8.[5] That it not how we expect legislation to be drafted; legislative drafters always need to think carefully about the meanings of the words they use. If an Act defines a term, the drafter must consider how the definition might affect the meaning of any similar terms used elsewhere in the Act.

10. Consistency and precision are particularly important in legislative drafting. That may well mean that legislation uses nouns in ways that correspond more closely to their related verbs than in other less formal contexts. If an Act defines "to import" in a particular way, it is likely to intend "importation" to mean doing what is covered by the definition, and "the importer" to mean the person who does it. That will be the default position under section 8, but it will be necessary to decide in each case whether section 8 has the right effect.

11. Conversely, if an Act defines a verb in a particular way but the drafter wants a related noun to have a more specialised meaning, the Act will have to define the noun. If the Act defines "to import" but intends "an importer" to mean a person who is involved in importation in a very specific way, it will need to state that explicitly. That would be true with or without section 8; and if there are separate definitions of the verb and the noun, section 8 will not be relevant to the relationship between them.[6]

12. The evidence to the Committee mentioned the possibility that a noun may sometimes have a completely different meaning from a corresponding verb.[7] It is certainly possible that legislation may occasionally define one term and also use another term which is etymologically related to it but has a completely different meaning. In that case, we would say that the two terms were not different forms of the same term, and that section 8 would not apply.

---

[5] It might also imply that legislation could define "action nouns" but then use "agent nouns" loosely. It is common for legislation to define action nouns (such as "contravention" or "education" or "adoption") and then to provide for those definitions to apply to "related expressions" such as verbs or agent nouns. But the need for care and precision is just as great when the term defined is a noun as when it is a verb.

[6] Section 8 will still be relevant to other grammatical variations of the defined terms, such as mutations, contractions, verbal inflexions, and plural and possessive forms of nouns.

[7] Oral evidence of Professor Watkin, paragraphs 150-159.

13. To take the example that was mentioned in oral evidence, section 8 would not mean that a statutory definition of the verbal forms "solicit" or "soliciting" applied to references to the noun "solicitor". Speakers of British English would not regard "solicitor" as an agent noun of the verb "solicit" but would instead see it as a completely different word. Section 8 would therefore be irrelevant.

Differences between Welsh and English

14. It has been pointed out that the ways in which verbs and nouns correspond to one another can be different in Welsh and in English. This example was given in evidence:

> "If you take a word such as 'compose' in English, 'composer' goes with 'compose', as does 'composition'. If you turn to Welsh, 'cyfansoddi', 'cyfansoddwr', 'cyfansoddiad', you have now gone to 'constitution' and it's no longer anything to do with composition."[8]

15. But the word "*cyfansoddiad*" has a range of possible meanings which include "composition" as well as "constitution".[9] If a piece of legislation used the words "*cyfansoddi*" and "*cyfansoddiad*" it is hard to imagine how the context could ever leave any doubt about which meanings were intended. But the drafter and translator would need to make sure they did not use the words in a way that created ambiguity, in the same way that they should always consider and avoid any potential ambiguities.

16. It is possible that the text of a Bill in one language might use a verb and noun that were etymologically related forms of the same word, while the text in the other language text used forms that were etymologically unrelated. For example, the English text might use "to teach" and "teacher" which come from the same etymological root, while the Welsh text used "*dysgu*" and "*athro*" which have different roots. However, it is possible for words to be grammatically related even though they have different etymological origins.

17. It is a feature of many languages, including English and Welsh, that different inflexions or grammatical forms of the same part of speech (e.g. forms of a noun, adjective or verb) may be based on different etymological roots. For example, in English "better" and "best" have a different root from "good," and in Welsh the same is true for "*gwell*" and "*gorau*" and "*da*". This can be seen in verbal inflexions too: "go" has a different origin from "went", as does "*mynd*" from "*aeth*". The use of etymologically unrelated words in this way is sometimes known as "suppletion".

18. The concept can also be applied to cases where different parts of speech (such as a noun and adjective) are regarded as related in meaning despite having different etymological origins. For example, in English "lunar" is used as an adjective of "moon" and "bovine" as an adjective of "cow". In Welsh, "*athro*" is etymologically unrelated to "*dysgu*" (or "*addysgu*") but performs the function of the agent noun of "*dysgu*" (or "*addysgu*"). They may be regarded as different suppletive parts of speech of the same word.

19. As in these examples, suppletion may occur in one language but not the other. It may mean that the words used in one language are etymologically related while the corresponding words in the other language are not. This is just an issue that drafters and translators will need to keep in mind when producing the two language texts of a Bill or

[8] Oral evidence of Professor Watkin, paragraph 161.

[9] The *Geiriadur Prifysgol Cymru* gives the following English meanings for "*cyfansoddiad*": "composition, combination; order, arrangement; constitution, physique; nature, disposition, temperament; the act of composing; that which is composed; structure, fabric; constitution (of state, &c.)".

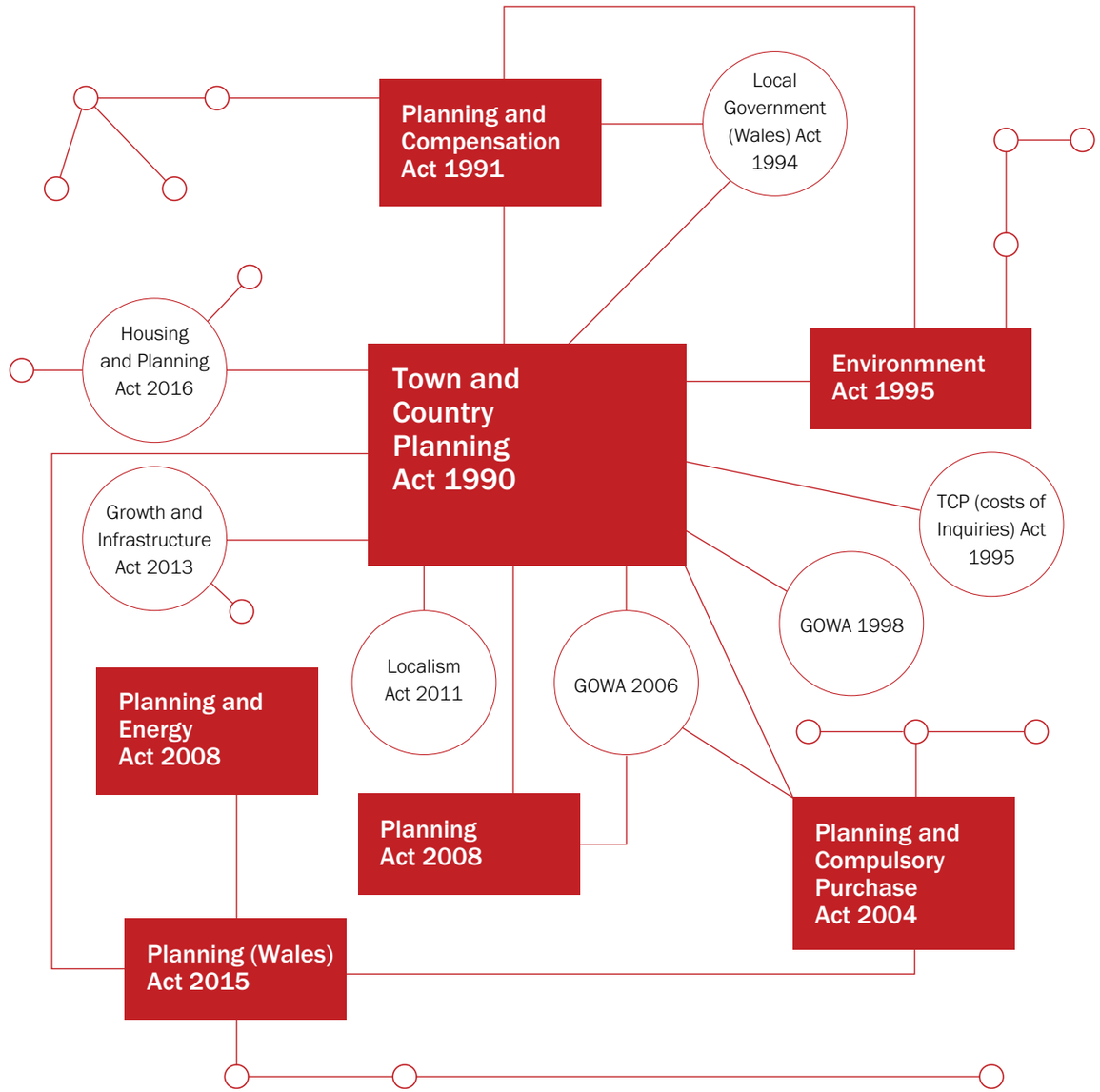
instrument, just as they have to keep in mind other differences between English and Welsh.

20. It is also important to note that these issues are not created by section 8 of the Bill, but can already arise. At present, if the drafter of Welsh legislation is proposing to apply a definition of a term to other related terms, or is simply assuming that it is obvious that a definition will apply to related terms, the drafter and translator will need to make sure that it is completely clear which terms the definition applies to in each language. If there is any doubt, the solution may be to define all of the words and expressions in question in both language texts. That position will not be changed by section 8.

Conclusion

21. For the reasons set out above, we consider that the linguistic issues that have been mentioned in evidence are of limited relevance to terms that are defined in Welsh legislation. We do not believe that they demonstrate that section 8 of the Bill will cause any problems.

Current Primary Legislation on Planning



Note: This is a representation of existing primary legislation on planning, most of which applies to Wales and England. Much of the legislation amends the Town and Country Planning Act 1990 which was a consolidation of legislation on planning made since 1947, but much of it stands apart. The diagram does not convey the vast amount of subordinate legislation and guidance (such as Technical Advice Notes) that also apply.

Future Legislation on Planning

Code

Planning, building and land use Code

Primary Legislation

Planning (Wales) Act 2022

Infrastructure consents

Acquisition of land and compulsory purchase

Building regulations and control

Secondary Legislation

Guidance and Codes of practice

Explanatory material

What is planning law?

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How do I apply for planning permission?

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Note: The Planning (Wales) Act 2022 would be a consolidation, for Wales only, of all the primary legislation on planning. It would be enacted by the NAW and would be the ëprincipal Actí on planning law. The Standing Orders of the Assembly could protect the structure of 'principal Acts' in the future.

Legislative Codes site navigation journey

Introductory page

Codes of Welsh Law

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› Codes

www.legislation.gov.uk

All Codes

Codes of Welsh Law

Planning, building and land use

Education and skills

One Code

Planning, building and land use Code

Planning (Wales) Act 2022

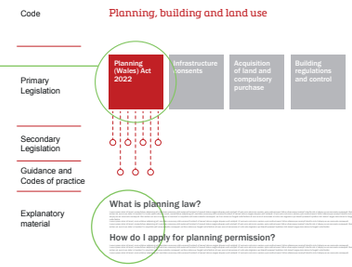
Infrastructure consents

Acquisition of land and compulsory purchase

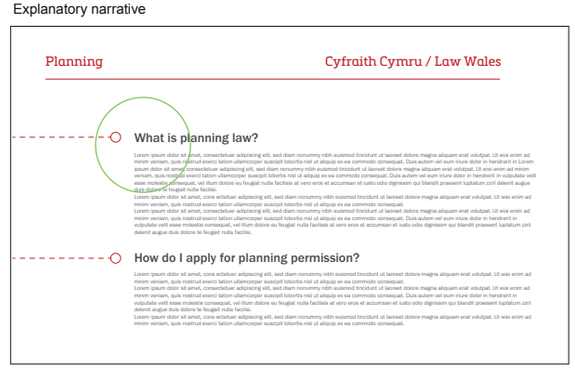
Building regulations and control

Part of Code

Planning, building and land use Code: Planning



Explanatory narrative



Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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Your ref:
Our ref: PO593/EJ/GE

13 March 2019

Dear Mick

Thank you very much for sending me the report you commissioned from Sir Paul Silk which considers how a Speakers' Conference could work in practical terms. The paper sets out very helpfully the key issues to be considered. The range of possibilities regarding how the function and locus of such a body could be established merit detailed exploration and Sir Paul Silks paper is a valuable contribution to such a discussion.

I remain open-minded and very much welcome the continued engagement of your committee and other Members on the very important matter of effective inter-parliamentary mechanisms. Any settled view I develop on this matter should be guided by the opinions of Assembly Members and Committees.

I propose that prior to the next meeting I have with fellow Speakers, I develop a sense of what Members believe would be their preferred model of a Speakers' Conference. I therefore suggest that you consider utilising the commissioned paper for the purposes of the discussion at your inter-parliamentary forum in April and that we arrange a meeting between us and the Chair of the External Affairs and Additional Legislation Committee following the forum. This meeting will be an opportunity to discuss the various models set out in the paper and to gauge the appetite of Members on which possibilities they think should be pursued and the best avenues for achieving this.

Yours sincerely

Elin Jones AM
Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

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Agenda Item 8

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